

**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

Kathleen Jones

C-2020-3022094

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 Company) on June 21, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Dennis J. Buckley served on May 31, 2022, in the above-captioned proceeding. Replies to Exceptions were not filed. For the reasons stated below, we shall grant, in part, and deny, in part, Suez's Exceptions and modify the ALJ's Initial Decision consistent with this Opinion and Order.

I. History of Proceeding

On September 16, 2020, Kathleen Jones (Mrs. Jones¹ or Complainant) filed a Formal Complaint (Complaint) against Suez, alleging that the Company failed to render safe and reliable service. Specifically, Mrs. Jones averred that on or around July 2, 2020, the water at her residence was discolored (brown) and that Suez did not return repeated telephone messages about the discoloration issue. The Complainant further averred that as a result of the discoloration problem and based on a water sample from her residence which she had independently tested, she purchased and has continued to purchase bottled water to use. The Complainant requested that Suez reimburse her for the expenses related to purchasing the bottled water at and from the time of the discoloration on July 2, 2020, for the cost of travel to and water analysis performed by Pennsylvania State University Agricultural Analytical Services Laboratory (PSU Laboratory), and for the cost of draining and refilling her 40-gallon hot water tank. The Complainant also requested that Suez staff its emergency hot line number with local persons able to answer water quality concerns, and that Suez collect water samples when more than one home on a block complains about water quality.

On October 19, 2020, Suez filed an Answer to the Formal Complaint. In that Answer, Suez denied the existence of a water quality, reliability or safety problem and denied that the discoloration problem was caused by Suez's water supply or distribution system. Suez claimed that the problem perhaps was caused by the actions of a malevolent third party contaminating the system. Suez denied that the discoloration in the Complainant's water was caused by a main break or any other systemic failure and further denied responsibility for any safety or quality of service problem. Suez averred that there was no safety issue because during the time period when the water discoloration occurred, the mandatory water test conducted by Suez met all primary and

¹ The ALJ noted that the Complainant asked to be referred to in this proceeding as "Mrs. Jones," as opposed to "Ms. Jones." I.D. at 3, n. 2.

secondary water quality standards. Suez denied the relevancy and questioned the evidentiary value of the Complainant's PSU Laboratory water testing. Suez contended that the problem occurred over the July 4, 2020, weekend and stated that a Suez representative spoke with the Complainant at length on July 8, 2020. Suez submitted that the Commission has no authority to order the reimbursements the Complainant requested.

On October 27, 2020, a Hearing Notice was issued setting December 3, 2020, as the date for a telephonic evidentiary hearing in this matter. On November 11, 2020, a notice was issued converting the December 3, 2020, hearing to a prehearing conference. On November 24, 2020, the Commission received correspondence from the Complainant, including a statement styled as a Rebuttal to Suez's Answer and prospective hearing exhibits.

On December 3, 2020, a telephonic prehearing conference was held. On December 7, 2020, the Commission served the ALJ's Prehearing Order summarizing the prehearing, including the ALJ's notation that the Commission is without authority to award damages or reimbursement to the Complainant. The ALJ thus limited the issues to be considered to whether Suez violated the quality of service requirements of Section 1501 of the Public Utility Code (Code).² The Prehearing Order also set forth the parameters for the evidentiary hearing. On January 11, 2021, a Notice was served setting a telephonic evidentiary hearing for February 23, 2021.

On January 29, 2021, Suez filed an Amended Answer to Mrs. Jones' Complaint. In the Amended Answer, Suez averred that on July 2, 2020, fire hydrant testing occurred at a location near the Complainant's residence, and the testing may have resulted in the disturbance of sediment, potentially causing the discoloration in the Complainant's water. Suez continued to deny that any safety or health issue had been

² 66 Pa. C.S. §1501.

created and that any violation of the Code or the rules and Regulations of the Commission occurred.

An evidentiary telephonic hearing was held on February 23, 2021. The Complainant appeared *pro se* and presented her own testimony. Six of the exhibits presented by the Complainant, (Complainant Exhibits 2, 3, 5, 6, 10, and 12), were admitted into evidence. Suez was represented by counsel, who presented the testimony of four witnesses and six exhibits, (Suez Exhibits 1-6), that were admitted into evidence. The record consists of a transcript of one hundred and four pages along with the exhibits admitted into the record. On March 28, 2022, an Order was served closing the record in this case.

In the Initial Decision served on May 31, 2022, the ALJ sustained the Complaint, having previously limited the issues to the alleged violation of Section 1501 of the Code. The ALJ granted the Complainant's claims for the issuance of a civil penalty, finding that the Complainant proved by a preponderance of the evidence that Suez violated Section 1501 of the Code, 66 Pa. C.S. § 1501, by failing to render adequate service. The ALJ thus imposed a \$5,000 civil penalty upon Suez.

The ALJ explained that the Complainant's unwillingness to accept the representations of Suez employees on July 7, 2020, and on July 8, 2020, was not the relevant issue to be considered. Instead, the true issue is "the adequacy of response which may be assessed based on response time and a meaningful discussion of the issues, whether one party is satisfied with the position of the other party or not." I.D. at 11, n. 4. The ALJ accepted as credible the Complainant's testimony that no such conversation was held until July 7, 2020, thus warranting a civil penalty.

On June 21, 2022, Suez³ filed Exceptions to the ALJ's Initial Decision. No Replies were filed. This Opinion and Order disposes of Suez's Exceptions.

II. Background

The Company's Exceptions in this case focus on the ALJ's determination to impose a \$5,000 civil penalty on Suez based on Suez's failure to provide reasonable service. Essentially, it took five days for the Company to adequately respond to the Complainant's concerns about her discolored water, despite repeated and lengthy conversations between the Complainant and Suez representatives the day after she observed the water's condition and ceased using it. The Company is arguing against the amount of the civil penalty that was imposed and is not debating that a Section 1501 violation occurred.⁴ The relevant facts pertaining to this issue are set forth below.

On July 3, 2020, the Complainant called the office of Suez Water but reached a recording stating that the office was closed for the Independence Day weekend.

³ Suez is now known as Veolia North America. Exc. at 1, n.1.

⁴ The ALJ did not reach any conclusions about the discoloration of the Complainant's water, but, rather, the ALJ's focus was on Company's customer service and its level of responsiveness to the Complainant regarding her concerns about the water discoloration. Regarding the Complainant's water test results, the ALJ stated the following:

The results of this test were not admitted to evidence because Complainant did not produce a witness or witnesses to authenticate and provide testimony with respect to the analysis. In this sense, Suez's extensive testimony about water quality and water quality testing is largely irrelevant except to the extent that it applies to the discussion between Complainant and Penny Bumbarger on July 8, 2020.

I.D. at 9, n.3.

On July 4-5, 2020, the Complainant called a toll-free number that had been identified as a number to call to report problems. The Complainant called the toll-free number five times and spoke with five different people. Suez's customer records confirm this call history. The Complainant was told by each person whom she spoke with that she would receive a call back from Suez, but the Complainant was not called back. Findings of Fact Nos. 5-8, Tr. at 22.

On July 6, 2020, the Complainant called Suez again and reached a Suez employee who was not able to confirm that the water at the Complainant's residence was potable. Finding of Fact No. 9, Tr. at 23. On July 7, 2020, the Complainant was called by a Suez representative. Finding of Fact No. 10, Tr. at 23-24. No Suez employee came to the Complainant's residence on July 7, 2020. Finding of Fact No. 11, Tr. at 24, 44-45. On July 8, 2020, the Complainant was contacted by a Suez employee, Penny Bumbarger, and there was a discussion with respect to the water discoloration problem, but the Complainant was not satisfied with the discussion. Finding of Fact No. 12, Tr. at 39-40. The Complainant had no prior notice that any sort of water testing would be conducted by Suez in early July. Finding of Fact No. 13, Tr. at 24-25.

Suez Exhibits 1 and 2 are records of the calls made by Mrs. Jones to Suez regarding the report of discolored water. Tr. at 54-60; Suez Exhs. 1 and 2. Suez Exhibit 1 is the record of the July 7, 2020, phone call by Mrs. Jones, which was answered by a Suez customer service representative, Maria Gonzales. Suez Exh. 1. Ms. Gonzalez spoke with Mrs. Jones on July 7, 2020, five days after the Complainant first reached out to Suez, by which time the discoloration had cleared from the Complainant's water. Tr. at 59-60. Ms. Gonzalez told Mrs. Jones that Suez water quality personnel would follow up on the matter. Tr. at 58; 60. The request for a callback on the July 7, 2020, call from Mrs. Jones was not returned by Suez because Suez personnel mis-identified the relevant telephone number for the Complainant. Tr. at 82-83. The ALJ emphasized that

the call records submitted by Suez are not recordings or transcripts of the calls. I.D. at 6, Finding of Fact No. 18.

Suez witness, Mr. Loncar testified that the Suez protocol for handling water discoloration complaints is that a customer service representative will ask if the water is hot or cold and then advise the customer to run the cold water until the water runs clear. Finding of Fact No. 15, Tr. at 48. He further testified that if a call comes in after regular hours, the call is routed to the Suez answering service, and the answering service representative has a script that states that the customer should run the cold water tap until the issue clears and concludes by directing the customer to the Suez website. Finding of Fact No. 16, Tr. at 49. The answering service is staffed and does not use a recording. Finding of Fact No. 17, Tr. at 49. Suez Exhibits 1 and 2 are listings of phone calls, the dates when they occurred, the number from which the calls originated and the duration of calls, but they are not call recordings or transcripts. Finding of Fact No. 18, Suez Exhibits 1, 2. The Complainant maintains that she was never read the protocol script described by Mr. Loncar. Finding of Fact No. 19, Tr. at 55, 58.

On July 6, 2020, Suez customer representative Maria Gonzalez spoke directly with the Complainant by phone for approximately fifteen (15) minutes and ascertained that the water discoloration problem had resolved. Finding of Fact No. 20, Tr. At 59-60.

Suez established on the record that, on July 2, 2020, Suez was performing fire hydrant maintenance in the Complainant's neighborhood. Suez confirmed that hydrant maintenance can in fact result in water discoloration. On July 2, 2020, Suez performed fire hydrant maintenance on a hydrant at the intersection of Colorado and Utah Streets in proximity to the Complainant's residence. Findings of Fact Nos. 21-23, Tr. at 63-66; Suez Exhibit 6. No flushing of the hydrant was

performed on July 2, 2020, but a pressure test was performed. There was no water main break in proximity to the Complainant's residence on July 2, 2020, and no notice of hydrant maintenance was posted by Suez on its website with respect to the July 2, 2020, maintenance, because that is not a notice provided by Suez. While distasteful to look at, there is no necessity to boil the water discolored by sediment in an unbreached system. Findings of Fact Nos. 24-27, Tr. at 66-67.

Penny Bumbarger is a Water Quality Specialist employed by Suez Water and is a Pennsylvania certified Class A Water Operator, which is an accreditation for operating large water systems. Finding of Fact No. 28, Tr. at 72-73. The ALJ credited Ms. Bumbarger's testimony by finding that the water supply in the Suez system has sufficient chlorine to inactivate bacteria. Finding of Fact No. 29, Tr. at 75. Further, while discoloration in water or even the presence of sediment represents a buildup of minerals, Tr. at 77, during the period in July, 2020, the water service for the Complainant's residence met the Pennsylvania Department of Environmental Protection (DEP) standards. Finding of Fact No. 31, Tr. at 77-78.

The ALJ found that, at the conclusion of the call between the Complainant and Penny Bumbarger on July 8, 2020, Ms. Bumbarger was of the opinion that the Complainant was satisfied with the call and stated that all of her questions had been answered. Finding of Fact No. 32, Tr. at 82. The ALJ found that, based on Ms. Bumbarger's testimony, Suez will test a customer's water at the customer's request, without charge, comparing the water quality in the customer's home with what is typical in Suez's distribution system. Finding of Fact No. 33, Tr. at 92-93. Finally, at the conclusion of the phone call between Ms. Bumbarger and the Complainant on July 8, 2020, it was Ms. Bumbarger's understanding that a test of the Complainant's water had not been requested. Finding of Fact 34, Tr. at 93.

III. Discussion

A. Legal Standards

The ALJ made thirty-four Findings of Fact and reached seven Conclusions of Law. I.D. at 4-8, 15-16. 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.

Additionally, any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation 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).

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company 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, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Company. *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. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982). 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 the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, also referred to as the burden of persuasion, to rebut the evidence of the customer shifts to the Company. If the evidence presented by the Company 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 Company. *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 going forward with the evidence 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).

B. Initial Decision

Initially, the ALJ noted that the Complainant alleged that Suez failed to render safe and reliable service, because on and around July 2-3, 2020, the water at Mrs. Jones’s residence was discolored (brown) and Suez did not return her messages complaining about the discoloration issue. The ALJ also noted that the Complainant averred that as a result of the discoloration problem, she purchased bottled water to use. For relief, the ALJ stated that the Complainant requested: that Suez reimburse her for the expenses related to purchasing the bottled water and for the cost of travelling to have the water tested and of the water analysis performed by the PSU Laboratory; that Suez staff its emergency hot line number with local persons able to answer water quality concerns; and that Suez collect water samples when more than one home on a block complains

about water quality. The ALJ concluded that such a quality of service issue is within the Commission's jurisdiction under Section 1501 of the Code.⁵ I.D. at 9-10.

In evaluating the evidence in this case, the ALJ concluded that Suez failed to provide reasonable service as required by Section 1501 of the Code.

The ALJ noted that the essence of the Complaint in this case is what the Complainant alleges was a lack of timeliness and adequacy of information on the part of Suez in responding to her Complaint about discolored water. The ALJ found the Complainant's testimony in this regard to be credible in that Suez did not respond in a timely or adequate manner to the Complainant's concerns from July 3-6, 2020. I.D. at 10-11.

For its part, Suez responded that the reason why the Complainant was not contacted immediately about her problem was because the problem occurred on the Independence Day weekend, but that a Suez employee finally spoke with her on July 6, 2020. The ALJ noted that the call records of both parties reflect that there were calls between the Complainant and Suez representatives before July 6, 2020, and some of those calls were lengthy. The ALJ emphasized however, that despite being

⁵ Section 1501 of the Code, 66 Pa. C.S. § 1501, provides the following, in pertinent part:

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.

characterized as “recordable calls,” Suez did not produce any detail with respect to these calls either in audio form or as a verified transcript, so it is impossible to know what exactly was said. I.D. at 10.

The ALJ declined to accept Suez’s claim, without proof, that its “discolored water- advise to flush” protocol was followed by what is essentially an after-hours call center as a matter of course, and that the conversations amounted to adequate service. The ALJ noted with displeasure the fact that Suez did not produce as witnesses any of the representatives that were on these calls. The ALJ also found important the context of what was happening at the time – that is -- this incident occurred a scant four months into the Covid-19 pandemic and the issuance of the Governor’s March 6, 2020, Declaration of a State of Emergency in the Commonwealth. The ALJ pointed out that, at a time when uncertainty and apprehension were pervasive, the Complainant was confronted with an unexplained water discoloration and a public utility that was not prompt in replying to her legitimate concerns. *Id.*

The ALJ found that Suez did not convincingly explain on the record why it failed to adequately respond to the Complainant until July 7, 2020, when the call with Maria Gonzalez occurred. The ALJ accepted as credible the Complainant’s testimony that her concerns with respect to the potability of her water were not specifically addressed by a Suez employee until at least July 7, 2020. Accordingly, the ALJ concluded that Suez failed to comply with Section 1501 of the Code and the imposition of a civil penalty is appropriate. I.D. at 9-11.

The ALJ concluded that, while “constantly flawless” service is not required of a utility under Section 1501 of the Code, the fact that Suez did not substantively respond to the Complainant for five days concerning her discolored water is not acceptable service. I.D. at 10. The ALJ found that Suez did not adequately explain on the record why its failure to respond to the Complainant occurred and determined that

this, in itself, is a failure to provide reasonable service. The ALJ reasoned that aggravating the matter is the fact Suez did not reach out to the Complainant, but, instead, the Complainant was required to make a further call to Suez in order to elicit a response from the Company. *Id.*

Finding that the Company violated Section 1501 of the Code, the ALJ next analyzed the Commission's policy statement at 52 Pa. Code § 69.1201, which sets forth the specific factors and standards the Commission uses in determining if a fine for violating a Commission Order, Regulation, or Statute is appropriate. The ALJ's analysis was as follows:

Applying the factors in Section 69.1201, I find the following: the conduct at issue was of a serious nature. Having experienced a water discoloration problem on July 2, 2020, with no explanation from Suez with respect to the cause and the potability of her water on July 7, 2020, Complainant was left to her own devices to attempt to ascertain the seriousness of the problem from July 3, 2020, until July 7, 2020. 52 Pa. Code § 69.1201(c)(1). While the consequences were not serious in that no threat to life or property occurred and the situation resolved itself, that does not minimize the deficiency complained of. 52 Pa. Code § 69.1201(c)(2). The conduct complained of was occasioned by negligence on the part of Suez. 52 Pa. Code § 69.1201(c)(3). There was no evidence presented that would support a finding that the regulated entity has made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). In this instance, the conduct complained of affected the Complainant, her household, and another party whose case is the subject of another formal Complaint.⁵ 52 Pa. Code § 69.1201(c)(5). These appear to be isolated incidents. 52 Pa. Code § 69.1201(c)(6). No investigation was conducted. 52 Pa. Code § 69.1201(c)(7). The civil penalty is limited by the terms of the Code and is reflective of failure to comply with the provisions of the Code and the rules and regulations of the Commission. No monetary penalty available under the limitations of the Code would, in itself, compel corrective

action by the utility. That action must be based on the utility's understanding of the seriousness of this matter as reflected in this Decision. 52 Pa. Code § 69.1201(c)(8). Past Commission actions in similar matters would not affect the assessment of the penalty. 52 Pa. Code § 69.1201(c)(9). There are no other factors to consider though it does not appear that any sort of apology was ever afforded to the Complainant by Suez. 52 Pa. Code § 69.1201(c)(10). In light of these factors, a \$5,000 civil penalty is appropriate, the matter having commenced on July 2, 2020, but not concluding until July 8, 2020.

I.D. at 13-14.

With respect to the Complainant's requests for relief that Suez staff its emergency hot line number with local persons able to answer water quality concerns, and collect water samples when more than one home on a block complains about water quality, the ALJ explained that the Commission, as a creature of statute, has only the powers and authority granted to it by the General Assembly as contained in the Code. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993). Further, the ALJ concluded that, whether the Complainant's additional requests for relief are viewed as necessary and appropriate, it is not appropriate to impose those requirements on a utility in this Formal Complaint proceeding. The ALJ offered that those sorts of measures might, however, be raised in the form of a rulemaking proceeding, a general base rate case (which considers the terms and conditions of service as well as rates), or through amendment of the Code.

I.D. at 14-15.

C. Exceptions and Disposition

1. Suez Exception No. 1 and Disposition

In its Exception No. 1, Suez disagrees with the ALJ's imposition of a \$5,000 civil penalty. Suez argues that Section 3301(a) of the Code provides for a maximum civil penalty of \$1,000 for a violation of Section 1501 of the Code. Exc. at 1. Suez also argues that Section 3301(b) of the Code, which applies to continuing offenses, does not apply in this instance, because that provision applies only in instances where the utility has violated a "regulation or final direction, requirement, determination or order of the Commission," and, according to the Company, this proceeding does not involve such a violation. Exc. at 1-2. Suez contends that because the ALJ found the Company violated Section 1501 of the Code, and not a regulation or final Commission direction, requirement, determination, or order, there is no statutory authority in this case for imposing a civil penalty exceeding \$1,000. Suez believes that the civil penalty should be reduced to no more than \$1,000. Exc. at 2.

Upon review, we disagree with Suez that the provisions in Section 3301(b) of the Code concerning continuing offenses do not apply to violations of Section 1501 of the Code. The pertinent provisions of Section 3301 in this case are as follows:

§ 3301. Civil penalties for violations.

(a) General rule. — If any public utility, or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, or any order of the commission prescribing temporary rates in any rate proceeding, or to comply with any final judgment, order or

decree made by any court, such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding \$ 1,000, to be recovered by an action of assumpsit instituted in the name of the Commonwealth. ...

(b) Continuing offenses. — Each and every day’s continuance in the violation of any regulation or final direction, requirement, determination, or order of the commission, or of any order of the commission prescribing temporary rates in any rate proceeding, or of any final judgment, order or decree made by any court, shall be a separate and distinct offense. ...

66 Pa. C.S. § 3301(a),(b).

The Commission has interpreted Section 3301(b) as applying to violations of the Code, including Section 1501. *See, e.g., Pamela Arnold v. Verizon LLC*, Docket No. C-2019-3014304 (Order entered February 3, 2022) (*Arnold*) (finding that a civil penalty was warranted for a violation of Section 1501 in the amount of \$850 per day, or a total of \$17,000, for the twenty days the customer was without telephone service); *Melinda Fisher v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2020-3019942 (Order entered October 7, 2021) (imposing a \$5,000 civil penalty on Columbia Gas of Pennsylvania, Inc. for failing to provide reasonable service to a customer in violation of Section 1501 of the Code, 66 Pa. C.S. § 1501, while excavating her property to install its gas main); *Lawrence Jones v. Philadelphia Gas Works*, Docket No. C-2019-3007984 (Order entered July 16, 2020) (*Jones*) (assessing a civil penalty of \$250 for a violation of Section 1501 for each year, over an eight year period (for a total of \$2,000), that Philadelphia Gas Works failed to attempt to reclaim a gas meter and determine unauthorized use at a service address); *Application of Consolidated Rail Corporation*, Docket No. A-00115212 (Order entered January 12, 2001) (assessing a civil penalty of \$100 per day, under Section 1301(b) of the Code, for a railroad company’s alteration of a

crossing without Commission authority in violation of Section 2702 of the Code, 66 Pa. C.S. § 2702).

To interpret the provisions of Section 3301 in any other manner would prohibit the Commission from assessing civil penalties for continuing violations of Section 1501 or any other provisions of the Code and, consequently limit the Commission's authority over enforcement of the Code provisions. Such a result would be unreasonable and, therefore, would conflict with the Statutory Construction Act, which states that a statute is to be interpreted so as to avoid an absurd or unreasonable result. *See* 1 Pa. C.S. § 1922(1); *Newcomer Trucking, Inc. v. Pa. PUC*, 531 A.2d 85, 87 (Pa. Cmwlth. 1987). For these reasons, we shall deny Suez Exception No. 1.

2. Suez Exception No. 2 and Disposition

In the alternative, Suez avers that the civil penalty should be reduced to \$250 per day for a five-day period because the Company's delay in responding to the Complainant was unintentional. *Exc.* at 2-3. Suez argues that because the ALJ concluded that the Company's conduct was negligent, rather than intentional, the presumptive starting point for a determination on a penalty is in the range of zero dollars to \$500 per day. *Id.* at 3-4. Suez relies on the Commission's recent decision in *Arnold* and quotes the following language from that decision:

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 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.

Exc. at 2-3 (citing *Arnold* at 34-35 (quoting *Joseph A. Rosi v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000) at 10).

Suez avers that as the ALJ discussed, the circumstances in this proceeding concerned an isolated incident over the Fourth of July holiday weekend involving the Complainant and a neighboring property,⁶ and there was no threat to life or property. Suez states that because this proceeding does not involve an egregious violation of the Code or intentional conduct, the civil penalty should be reduced consistent with prior Commission decisions. Suez submits that the penalty determination should be based on a mid-range amount of \$250 per day for negligent conduct over a five-day period, for a total of \$1,250. Exc. at 3-4.

In undertaking a review of the ALJ's conclusions, we must emphasize our broad discretion in determining an appropriate civil penalty amount based on the specific

⁶ The neighboring property is the subject of a separate Commission proceeding, *Patricia Shaver v. Suez Water Pennsylvania, Inc.*, Docket No. C-2020-3022088 (Initial Decision served May 25, 2022).

circumstances of each case. Our review of the relevant facts in this case, the factors in the Policy Statement, including similar prior Commission decisions, leads us to find that the civil penalty the ALJ recommended should be reduced in this case. While we generally agree with the ALJ's analysis of the factors in the Policy Statement, we find that this case is akin to our prior decisions in which civil penalties for negligent conduct have fallen in the range of zero to \$500 per day. *See, e.g., Jones* (\$2,000 civil penalty, determined by \$250 per year for eight years for negligent violation of Section 1501 for the company's failure to follow up on meter reclamation activity, resulting in large balance); *Michael Morales v. Philadelphia Gas Works*, Docket No. C-2018-3002466, (Order entered May 21, 2020) (\$2,000 civil penalty for negligent violation of Section 1501 by failing to timely address meter tampering); *Jack Bleiman v. PECO Energy Company*, Docket No. F-2012-2284038 (Order entered June 13, 2013) (\$3,680 civil penalty, calculated as \$20 per day for each of the 184 days that PECO Energy Company was in violation of Section 1501 the Code, for negligently billing an incorrect residential heating rate). While there are some instances in which we have found it appropriate to impose a higher civil penalty per day, even when negligence is involved, the instant case does not have aggravating factors that would warrant such a result. *See, e.g., Arnold* (finding that a penalty in the amount of \$850 per day, or a total of \$17,000, for the twenty days the customer was without telephone service, was warranted).

Accordingly, we conclude that a \$1,250 civil penalty, based on \$250 per day for the Section 1501 violation, is more appropriate here. We agree with the ALJ that the Company's substandard customer service response in this case constituted conduct of a serious nature and should be taken seriously. The Complainant contacted Suez about a water discoloration problem, and the Company failed to adequately respond to multiple telephone calls from her over a five-day period, leaving Mrs. Jones to figure out on her own how to address the problem. Nevertheless, the conduct did not rise to the level of willful conduct or misrepresentation. 52 Pa. Code § 69.1201(c)(1). Some of the factors that support a lower civil penalty and are also included in the ALJ's analysis are as

follows: (1) the resulting consequences were not serious in that there was no threat to life or property due to the Company's later response, as the water discoloration issue resolved itself and was likely attributable to fire hydrant testing near the Complainant's residence, 52 Pa. Code § 69.1201(c)(2); (2) the customer service conduct complained of was occasioned by negligence on the part of Suez, 52 Pa. Code § 69.1201(c)(3); (3) the conduct complained of affected the Complainant and a neighboring property, 52 Pa. Code § 69.1201(c)(5); (4) this seems to be an isolated incident, 52 Pa. Code § 69.1201(c)(6); and (5) past Commission decisions in similar matters, as we discussed herein, 52 Pa. Code § 69.1201(c)(9). For these reasons, we shall grant Suez Exception No. 2 and modify the ALJ's Initial Decision accordingly.

IV. Conclusion

Upon review, we shall grant, in part, and deny, in part, Suez's Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the Exceptions filed by Suez Water Pennsylvania, Inc. on June 21, 2022, are granted, in part, and denied, in part.
2. That the Initial Decision of Administrative Law Judge Dennis J. Buckley, served on May 31, 2022, is modified consistent with this Opinion and Order.
3. That the Complaint of Kathleen Jones against Suez Water Pennsylvania, Inc. at Docket No. C-2020-3022094 is granted, in part, and denied, in part.

4. That within thirty (30) days of the entry date of this Opinion and Order, Suez Water Pennsylvania, Inc., shall pay a civil penalty of \$1,250, payable by certified check or money order payable to “Commonwealth of Pennsylvania” and sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

5. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

6. That after Suez Water Pennsylvania, Inc. remits the \$1,250 civil penalty as required by Ordering Paragraph No. 4, above, the Secretary’s Bureau shall mark this proceeding closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2022

ORDER ENTERED: August 25, 2022