

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Kocher	:	
	:	
v.	:	C-2023-3038159
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of a customer alleging that the utility company failed to render safe and reliable service based on failure to provide timely and sufficient notice of the water emergency or alternative water sources. The Formal Complaint is denied based on Complainant’s failure to establish that the utility company violated the Public Utility Code, a Commission regulation or a Commission order.

HISTORY OF THE PROCEEDING

On February 8, 2023, Robert Kocher (“Complainant” or “Mr. Kocher”), filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (“Respondent” or “PAWC”) alleging that PAWC failed to render safe and reliable service by failing to provide timely and sufficient notice of a water main break on January 14, 2023 that resulted in contaminated water along with notice of when the water was again potable. (Complaint ¶¶ 3-5). Mr. Kocher further

averred that PAWC improperly billed customers for contaminated water and failed to advise customers of alternative water supplies. (Complaint ¶¶ 4-5)

On February 28, 2023, PAWC filed an Answer admitting and denying various allegations in the complaint. Specifically, PAWC denied that it failed to provide timely and sufficient notice of the water main break, updates on restoration of the water and water safety. (Answer ¶¶ 4-5). PAWC further stated that repairs were completed properly and timely and that it acted overall in compliance with the law. (Answer ¶¶ 4-5).

On March 8, 2023, a Call-In Telephonic Hearing Notice (“Hearing Notice”) was issued scheduling a telephonic hearing on May 3, 2023 and assigning me as presiding officer. On March 8, 2023, I issued a Prehearing Order addressing various procedures that would govern the hearing.

On May 3, 2023, the hearing was held as scheduled. Mr. Kocher represented himself at the hearing and offered testimony in support of the complaint. Mr. Kocher sponsored the following 12 exhibits that were admitted into the record without objection: (1) Exhibit A-1 - Letter dated February 7, 2023 to Mr. Kocher; (2) Exhibit A-2 - Letter from Julie Carlin; (3) Exhibit B-1 - Telephone notification dated January 14, 2023; (4) Exhibit B-2 - Website page for PAWC dated January 15, 2023; (5) Exhibit B-3 - Email from PAWC dated January 14, 2023; (6) Exhibit C-1 - Photo of water glass (top view); (7) Exhibit C-2 - photo of water glass (side view); (8) Exhibit D - 52 Pa. Code § 69.1603; (9) Exhibit E-1 - Order confirmation from Whirlpool dated January 16, 2023; (10) Exhibit F – Census for 2010; (11) Exhibit G – 52 Pa. Code § 67.1; and (12) Exhibit H – 52 Pa. § 56.71. PAWC was represented by Attorney Michael A. Gruin, who presented Senior Manager of water operations for PAWC, Daniel Rickard, as a witness. The witness sponsored the following two exhibits that were admitted into the record without objection: (1) PAWC Ex. 1 – Map of water lines and (2) PAWC Ex. 2 – Closed case summary.

The record closed on May 30, 2023 when the 94-page transcript was filed with the Commission.

FINDINGS OF FACT

1. Complainant is Robert Kocher, who resides at 1108 South Prospect Street, Nanticoke, PA 18634 (“service property”) where he receives water service from Respondent. (Tr. 14).

2. Respondent is Pennsylvania-American Water Company, who provides residential water service to the service property.

3. On January 14, 2023, at approximately 4:30 a.m., there was a water main leak or break in the Nanticoke area. (Tr. 15, 19, 35).

4. PAWC notified the public about the water main break between 11:35 a.m. and 11:40 a.m. on January 14, 2023, which was approximately seven hours after the break. (Tr. 16, 24).

5. PAWC provided an estimate of restoration of water service. (Tr. 21).

6. On January 14, 2023 at 11:40 a.m., PAWC texted Mr. Kocher and other customers the following message (Tr. 24, 42; Complainant’s Exhibit B-1):

PAAmWater: Emergency repair: Water outage/
discoloration possible your area. Estimated repair time 10
hours. Updates/more info at Pennsylvaniaamwater.com

7. On January 14, 2023 at 11:35 a.m., PAWC posted an alert on its website that advised as follows (Complainant’s Exhibit B-2):

Nanticoke: Emergency Repairs: Locust Street

This is an urgent notification from Pennsylvania American Water. Our crews are making emergency repairs due to a water main break beginning at 11:00 AM in Nanticoke and surrounding municipalities. You reside in the affected area and may experience discolored or

cloudy water, low water pressure, or no water. Repairs are expected to take approximately 10 hours to complete.

8. On January 14, 2023 at 11:40 a.m., PAWC emailed Mr. Kocher and other customers the following information (Tr. 42; Complainant's Exhibit B-3):

This is an urgent notification from Pennsylvania American Water. Our crews are making emergency repairs due to a water main break beginning at 11:00AM in Nanticoke and surrounding municipalities. You reside in the affected area and may experience discolored or cloudy water, low water pressure, or no water. Repairs are expected to take approximately 10 hours to complete.

When water service is restored, customers may experience discolored water. If your water is discolored, run the cold water taps only, at the lowest level of the house for about 3 to 5 minutes until the water runs clear. You will not receive any further notification unless additional action is required or conditions change.

If you are a landlord and water service is in your name, please inform your tenants so they are aware of this impact to their water service. In keeping with American Water's focus on safety for both customers and employees, please do not approach our crews while they work. For more information or to see a map of the affected area please go to <https://amwater.com/paaw/alerts>. We apologize for any inconvenience and appreciate your patience and understanding as we work to resolve the issue.

9. Water taken from the tap at that the service address on January 14, 2023 contained some sediment. (Tr. 26; Complainant's Exhibits C-1 and C-2).

10. Mr. Kocher never lost complete water service. (Tr. 28).

11. The last water main break in the Nanticoke, PA area prior to the January 14, 2023 break was in September 2021. (Tr. 29-30).

12. Daniel Rickard is a senior manager of water operations for PAWC in the Scranton/Wilkes-Barre area, whose duties include oversight of employees performing water distribution, storage, pumping, metering and customer service. (Tr. 33).

13. The water main that broke on January 14, 2023 was a 16-inch cast iron pipe that was installed in approximately 1892. (Tr. 35).

14. The service property was not served directly off the broken water main, but the water main is one of three mains that provide water to the Nanticoke area. (Tr. 35; PAWC Exhibit 1).

15. The service property is directly serviced by a six-inch water main located along Prospect Street. (Tr. 45).

16. The water main that broke on January 14, 2023 was located along Locust Street between East Main Street and Arch Streets in Nanticoke, Pennsylvania. (Tr. 35).

17. PAWC was first notified about the issue on January 14, 2023 at 4:30 a.m. via a call from the fire department indicating that there was water bubbling up out of the ground. (Tr. 35).

18. PAWC's staff arrived at the scene of the water main break at approximately 6:42 a.m. on January 14, 2023. (Tr. 35, 37).

19. Based on seeing water coming out of the water pipe as opposed to going into the pipe, PAWC made a determination that the water was not contaminated. (Tr. 68).

20. PAWC repaired the water main break by 9:00 p.m. on January 14, 2023. (Tr. 36).

21. Repair process for the water main break involved: (a) determining if it was a break or a leak; (b) identification of the break area; (c) “feeding” the leak by increasing water production to maintain customer service; (d) isolation of the break at the valves; (e) cutting out the broken section of pipe; (f) installing the new section of pipe; and (g) re-opening of the valves. (Tr. 36-37).

22. Prior to issuing the customer notifications, PAWC took steps to identify the type of water main break that was at issue, who was affected by the break, their plan of action and the approximate time for repair. (Tr. 38).

23. PAWC delayed notification to the customers to ensure that they are not sending out wrong information to customers thereby creating more questions or confusion. (Tr. 66-67).

24. PAWC was able to isolate the leak/break and begin repairs by approximately 12:00 p.m. (Tr. 38).

25. There were no customer interruptions (i.e., customers without water) as a result of the water main break on January 14, 2023, but some customers may have experienced low water pressure during the timeframe. (Tr. 39).

26. The water in the Nanticoke area remained drinkable or potable the entire time on January 14, 2023 despite the presence of air bubbles, sediment or cloudiness. (Tr. 39-40).

27. The water remained pressurized, chlorinated and safe to consume at all times on January 14, 2023. (Tr. 43).

28. Constant pressure in the water system prevented any outside contamination or sediment from entering the system. (Tr. 48-49).

29. Sediment in the water at the service property could be attributable to the distribution system or interior plumbing. (Tr. 49-50).

30. Water for the Nanticoke area is taken from the area creek and then treated at the Ceasetown Filter Plant. (Tr. 50).

31. PAWC did not receive any requests from customers for bottled water during the time of the January 14, 2023 water main break. (Tr. 41).

32. PAWC's text and email notifications made to customers on January 14, 2023 were standard for PAWC as far as language and timing of the notifications. (Tr. 42).

33. PAWC did not classify the water main break on January 14, 2023 as a service outage or interruption because it did not result in loss of pressure in the water system altogether or any customers losing water service. (Tr. 42, 46, 66).

34. PAWC classified the water main break on January 14, 2023 as a service disruption because the result was lower pressure than normal and possibility of cloudy water. (Tr. 61).

35. PAWC did not issue any further notifications after those issued at 11:40 a.m. because the work was completed within the prescribed timeframe in that message. (Tr. 42-43).

DISCUSSION

Burden of Proof

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 Public Utility Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the

problems alleged in his Complaint through a violation of the Public Utility Code, a Commission regulation or an order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa.C.S. § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 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 to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now must provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion 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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Insufficient/Untimely Notices

In this case, Mr. Kocher alleged that PAWC failed to provide timely and sufficient notice of the water main break, updates on repairs, an alternative water source and notice of restoration of water service stemming from the January 14, 2023 water main break. Mr. Kocher argues that PAWC's actions violate several regulations which will be discussed in turn below.

The first regulation at issue is section 67.1, which governs utility actions during “service outages.” Section 67.1 provides that utilities are required to notify the Commission of unscheduled service interruptions within one hour of the preliminary assessment and provide a service outage report within ten working days after restoration of service under specific conditions. 52 Pa. Code § 67.1. Specifically, the regulation requires water utilities to notify the Commission when 2,500 or 5%, whichever is less, of utilities’ total customers have an unscheduled service interruption for six or more consecutive hours. *Id.*

The next regulations at issue are sections 69.1601-69.1603, which govern unscheduled water service interruptions and associated actions. Section 69.1601 provides in pertinent part:

Section 69.1601

- (a) The purpose of this statement of policy is to provide guidance to the water industry relating to unscheduled water service interruptions, particularly regarding the types of public notice and associated actions that will be deemed acceptable and appropriate for meeting the safe, reasonable and adequate standard in 66 Pa.C.S. § 1501 (relating to character of service and facilities) and for complying with the Commission’s regulation in § 56.71 (relating to interruption of service). It is imperative that affected ratepayers/occupants receive actual, timely and sufficient notice of unscheduled service interruptions whenever a situation affects water quality or quantity and particularly when the water is unsafe to drink.
- (b) Affected ratepayers/occupants should be notified when 2,500 or 5%, whichever is less, of a utility’s total ratepayers/occupants have an unscheduled service interruption involving any reduction in the quantity of water in a single incident of 6 or more consecutive hours. Timely notification of fewer customers, however, is recommended when practicable. When there is an unscheduled service interruption involving the quality of water, water utilities should follow the applicable Department of Environmental Protection regulations regarding the public notification requirements for events requiring Tier 1 notification under 25 Pa. Code § 109.408(b) (relating to Tier 1 public notice—form, manner and frequency of notice), or Tier 2 notification

under 25 Pa. Code § 109.409(b). Timely notification of customers in other incidents affecting the quantity or quality of water, such as water in short supply, discolored or sediment-laden, however, is recommended when practicable. It is also recommended that utilities set as a goal the Tier 1 time frame of “as soon as possible” rather than “no later than 24 hours” and the Tier 2 time frame of “as soon as possible” rather than “but no later than 30 days.”

52 Pa. Code § 69.1601. Thus, similar to how section 67.1 provides the circumstances of when a water utility must provide notice to the Commission during service outages, section 69.1601 defines the circumstances where a water utility is to provide notice to customers of unscheduled service interruptions based on quality or quantity, particularly when water is unsafe to drink.

The public notification guidelines for water utilities are set forth in section 69.1602. Section 69.1602 provides for notification to customers via various methods that include: mass media, website, automated dialer system, actual notice and email. 52 Pa. Code § 69.1602. The notice provided is to include relevant information about the event, including affected locations, possible duration of the outage, possible adverse health effects, population or subpopulation particularly at risk and description of action affected ratepayers/occupants should take to ensure their safety with updates as needed. *Id.* The updates are to be provided on a predictable, regular schedule for the duration of the event. *Id.*

In addition to public notification, water utilities are required to do other associated actions for unscheduled water interruptions. Section 69.1603 provides as follows:

Section 69.1603

- (a) Water utilities need to make reasonable efforts to ensure that adequate quantities of alternative supplies of water essential for domestic use are made available in a sufficient number of conspicuous and predetermined locations relative to the number of ratepayers/occupants affected by the incident. This includes the use of water tankers or free bottled water, or both. Utilities should ensure that ratepayers/occupants are adequately notified of the times available and locations of alternative water supplies. When bottled water is used,

utilities should have plans in place, based on prior coordination with local vendors, to have adequate supplies to last for the duration of the outage. The Commission encourages utilities to work proactively with community-based organizations that would have readily available information on the location and special needs of affected elderly or homebound ratepayers/occupants in the area.

- (b) Notice should be made to Commission personnel as soon as possible upon a utility becoming aware of an unscheduled service interruption. It should be noted that § 67.1(c) (relating to general provisions) already directs utilities to contact the Commission within 1 hour following preliminary assessment of conditions. Furthermore, jurisdictional utilities should maintain lists of appropriate Commission contact personnel, including current after-hour contact numbers.

52 Pa. Code § 69.1603.

The final regulation cited to by Mr. Kocher was section 56.71, which provides that a public utility may temporarily interrupt service when necessary with or without prior notice for repairs, maintenance, to eliminate an imminent threat to life, health or substantial property damage or for emergencies. 52 Pa. Code § 56.71. When the interruption is without prior notice, notice of the cause and expected duration is required to be given to potentially affected customers and occupants as soon as possible. *Id.* This notification by the public utility requires them to take reasonable steps such as personal contact, phone contact and mass media with an explanation of the cause and duration of the interruption.

Mr. Kocher averred that the circumstances of the water main break on January 14, 2023 qualified as a service outage or unscheduled service interruption thereby triggering the requirements of the regulations at 52 Pa. Code §§ 67.1, 69.1601-1603 and 56.71. Mr. Kocher further averred that PAWC failed to comply with these regulatory requirements. (Tr. 15-16, 21). In opposition, PAWC argued there was no service interruption or service outage because Mr. Kocher never lost water service and the water remained potable the entire time. (Tr. 28, 39-40). Rather, PAWC considers this to be a “service disruption” that did not trigger the regulatory notification requirements. Thus, the initial question before the Commission is whether the event

on January 14, 2023 constituted a “service outage” or “service interruption” as contemplated by the regulations.

Neither the Public Utility Code, the Commission’s regulations nor case law specifically define “service outage” or “service interruption.” However, the regulation titled “service outages” discusses the issue in terms of “service interruptions” thereby indicating that the regulation is treating those two terms interchangeably. 52 Pa. Code § 67.1. Additionally, the regulation identifying the scope for water service interruptions indicates that interruptions involve quantity or quality of water particularly when the water is not safe to drink. 52 Pa. Code § 69.1601. Furthermore, the Pennsylvania Department of Environmental Protection also discusses a “service interruption” in terms of affecting the quantity or quality of water provided to the customer. 25 Pa. Code § 109.708. Accordingly, I find that a water “service outage” or “service interruption” occurs when a utility fails to provide an adequate quantity of water or fails to provide safe/potable water to one or more customers.

In this case, Mr. Kocher presented no evidence to establish that he experienced a water service outage or service interruption in terms of quantity as he never lost water service altogether nor did he present any evidence to establish that he lost water pressure to the level prescribed by Commission regulations. In regard to quality, Mr. Kocher testified that he found sediment in water from his tap, but he offered no additional testimony to establish that the water was not safe or potable. (Tr. 29). To the contrary, I found the testimony from Mr. Rickard to be credible whereby he indicated that the water service provided to Mr. Kocher remained safe and potable the entire time despite the water main break on January 14, 2023. (Tr. 43). PAWC accomplished this by maintaining pressure and chlorination in the water during the break and repairs. (Tr. 48-49). Therefore, I find there was no water “service outage” or water “service interruption” as a result of the January 14, 2023 water main break.

Because there was no water service outage or water service interruption in this matter, the notification requirements and the alternative water supply requirements of the regulations at 52 Pa. Code §§ 67.1, 69.1601-1603 and 56.71 were not triggered. Thus, Mr.

Kocher failed to establish that PAWC violated the Public Utility Code, a Commission regulation or an order of the Commission related to a water service outage or water service interruptions.

Billing for Water

A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (*Kossman*); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Public utility rates are required to be just and reasonable, and where a customer is heard to complain concerning a proposed change in rate, the burden of proof is upon the public utility to show that the proposed rate is just and reasonable. 66 Pa.C.S. § 1301.

However, “[w]here the complaint involves an existing rate . . . the burden then falls upon the customer to prove that the charge is no longer reasonable” or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981) (*Brockway*). The burden of showing that a tariff is unreasonable is “very heavy because tariff provisions submitted to and approved by the Commission are *prima facie* reasonable.” *Kossman*, 379 A.2d at 1151.

In this case, Mr. Kocher alleged that PAWC improperly billed him for contaminated water and failed to credit him for non-potable water. (Tr. 21). This constitutes a challenge to the existing rate. Since the Mr. Kocher objects to an existing rate, he has a heavy burden to prove by a preponderance of the evidence that the charge is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway*; *Kossman*. I find that Mr. Kocher has not met this burden.

Mr. Kocher testified that he had sediment in his water as a result of the water main break on January 14, 2023 and presented a photo of water in a glass from his tap in support of this. However, he failed to offer any further evidence that he was improperly billed for water that was unsafe. Nor did Mr. Kocher offer evidence as to what portion of the water that he was

billed for was unusable or non-potable. To the contrary, Mr. Rickard provided credible testimony that the water service provided to Mr. Kocher remained safe and potable the entire time despite the water main break on January 14, 2023. (Tr. 43).

A Complainant has to pay for the utility service consumed. By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 637 (1982). *Kea v. Peoples Natural Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303. *Neal v. Phila. Gas Works*, Docket No. Z-00871874, (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. 66 Pa.C.S. § 1401(1).

In this case, PAWC provided safe and potable water that was used by Mr. Kocher. (Tr. 43). PAWC also advised Mr. Kocher about the potential of having cloudy or discolored water following the water main break in the Nanticoke, PA area on January 14, 2023. (Complainant's Exhibits B-2 and B-3). PAWC also advised Mr. Kocher and other customers of actions to take if the water was cloudy or discolored, which included running the cold water taps at the lowest level of the house for about three to five minutes until the water runs clear. (Complainant's Exhibits B-2 and B-3). Moreover, none of the notices from PAWC stated that the water was in any way unsafe or required boiling. Finally, Mr. Kocher failed to present any evidence to establish that the sediment in his water was not from his own interior plumbing, which was indicated to be a possibility in this case. (Tr. 49-50). Thus, Mr. Kocher failed to establish that he was improperly billed for unsafe water.

Reliability, Safety or Quality

In this case, Mr. Kocher alleged that PAWC had failed to render safe and reliable service on January 14, 2023 based on the water main break occurring on that date and the corresponding failure to: (a) provide safe water; (b) provide alternative water sources for elderly

and homebound consumers; (c) provide adequate notices regarding the water emergency; and (d) respond to his calls regarding the safety of the water.

Quality of service issues are within the Commission's jurisdiction under Section 1501 of the Public Utility Code, which states 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.

66 Pa.C.S. § 1501.

The statute at 66 Pa.C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Behrend v. Bell Tel. Co. of Pa.*, 243 A.2d 346 (Pa. 1968); *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd*, 420 A.2d 371 (Pa. 1977). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered Dec. 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa.P.U.C. 662 (1993). Thus, the mere fact that there was a water main break on January 14, 2023 does not establish that PAWC provided unreliable service.

The complaint in this case is based on the actions and communications, or alleged lack thereof, from PAWC following the water main break on January 14, 2023. I will first

address PAWC's actions regarding repair of the water main break. The water main break occurred on January 14, 2023 at approximately 4:30 a.m. (Tr. 15, 19, 35). PAWC was notified about the issue around that same time by the fire department who indicated that water was bubbling up from the ground. (Tr. 35). PAWC had staff at the scene at approximately 6:42 a.m. (Tr. 35, 37). PAWC was able to begin repairs by 12:00 p.m. on January 14, 2023. (Tr. 38). The overall repair process involved: (a) determining if there was a break or leak; (b) identifying where the break occurred; (c) "feeding" the leak by increasing water production to maintain customer service; (d) isolation of the break at the relevant valves; (e) cutting the broken sections of pipe out; (f) installing the new pipe sections; and (g) re-opening the valves. (Tr. 36-37). The repair was completed by 9:00 p.m. on January 14, 2023. (Tr. 36).

Mr. Kocher does not offer any facts to support that PAWC's actions of repairing of the January 14, 2023 water main break were unreasonable. To the contrary, I find that PAWC's actions of getting staff to the scene of the incident approximately two hours after being notified during the early morning hours was not unreasonable. Furthermore, I find that PAWC's process of identifying the problem, isolating it and repairing it within 15 hours of arriving on the scene was also not unreasonable. This finding is consistent with the Commission's prior holding that a utility provided reasonable service when fixing a water main break within 24 hours. *Murray v. Phila. Suburban Water Co.*, Docket No. C-00004623 (Opinion and Order entered July 12, 2002).

The next issue we will address is PAWC's duty to provide safe water. As previously found in this decision, the water supplied to Mr. Kocher following the water main break on January 14, 2023 was safe and potable the entire time despite potentially having some cloudiness or sediment. (Tr. 43). Mr. Kocher did not present any evidence to establish that the water was unsafe beyond showing that there was some sediment in his water. There was also no evidence establishing that the sediment in the water did not come from Mr. Kocher's internal plumbing. Nor did Mr. Kocher present any evidence to show that he was ever advised that he could not safely use or consume the water. Therefore, I find that Mr. Kocher has failed to establish that PAWC failed to supply safe and potable water based on the water main break on January 14, 2023.

Mr. Kocher also averred that PAWC failed to provide an alternative water source for elderly/homebound customers and failed to provide adequate notice/updates of the water emergency stemming from the January 14, 2023 water main break. Mr. Kocher based these arguments on the regulatory requirements at 52 Pa. Code §§ 67.1, 69.1601-1603 and 56.71. As previously discussed in this decision, the regulatory requirements to provide an alternate water source and notices to customers is only triggered when there is a water service outage or service interruption. This decision has already discussed and concluded that there was no service outage or interruption in this case. Thus, there was no requirement for PAWC to provide an alternate water source nor meet the other regulatory notice requirements asserted by Mr. Kocher.

The final reliability or quality issue to address is Mr. Kocher's claim that PAWC failed to respond to his inquiries about the safety of the water. While it has been established that the water remained safe and potable despite the January 14, 2023 water main break, PAWC's communication with Mr. Kocher is a separate issue. Mr. Kocher asserted that PAWC failed to adequately communicate with him regarding his water safety concerns.

The Commission has previously opined that failure to communicate with a customer who has inquired about water safety can qualify as unreasonable or inadequate service. *Shaver v. Suez Water Pa., Inc.*, Docket No. C-2020-3022088 (Opinion and Order entered Aug. 25, 2022) ("*Shaver*"); *Jones v. Suez Water Pa., Inc.*, Docket No. C-2020-3022094 (Opinion and Order entered Aug. 25, 2022) ("*Jones*"). In both *Shaver* and *Jones*, the Commission found that failure of the water utility to respond to customer inquiries about water safety for four to five days constituted unreasonable and inadequate service where the customers experienced cloudiness in their water without any explanation from the utility.

In this case, Mr. Kocher averred that he called PAWC numerous times following the water main break on January 14, 2023 and that PAWC failed to call him back and address his safety concerns. (Tr. 13-14, 16, 19, 22). However, unlike the situation in *Shaver* and *Jones*, there was prior communication by PAWC to Mr. Kocher of the potential issue via text, email and post on the PAWC website. Specifically, between 11:35 a.m. and 11:40 a.m., PAWC communicated with Mr. Kocher via text, notice posted on its website and email advising him that: (a) there was a potential water issue in the area that could result in discolored/cloudy water,

low water pressure or no water; (b) that repairs were being made and would take approximately ten hours; (c) that if the water was discolored, he was to run the cold water taps at the lowest level of the house for three to five minutes; and (d) no additional notifications would be sent unless conditions changed. (Complainant's Exhibits B-1 through B-3).

Thus, PAWC did communicate with Mr. Kocher regarding the water emergency on January 14, 2023. Furthermore, nothing in PAWC's communications indicated that Mr. Kocher's water was unsafe or otherwise non-potable. It is clear from the regulations that a water utility is required by law to advise customers when there is a water outage or service interruption based on issues with the quantity or quality of water being provided. There is no corresponding statutory or regulatory duty to affirmatively state that water is safe based on an event. Thus, it is axiomatic that the water provided is presumed to be safe unless customers are told otherwise. Therefore, Mr. Kocher has failed to establish that PAWC violated the Public Utility Code, a Commission regulation or a Commission order regarding safety, reliability or quality of service.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in his Complaint through a violation of the Public Utility Code or a regulation or order of the Commission; this must be shown by a preponderance of the evidence. 66 Pa.C.S. §701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. 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. 66 Pa.C.S. § 1501.

5. Water utility companies shall provide required notices to the Commission and customers whenever there is a water service outage or unscheduled water service interruption. 52 Pa. Code §§ 56.71, 67.1, 69.1601-1603.

6. A water “service outage” or “service interruption” occurs when a utility fails to provide an adequate quantity of water or fails to provide safe/potable water to one or more customers. 25 Pa. Code § 109.708; 52 Pa. Code §§ 67.1, 69.1601.

7. Complainant failed to demonstrate by a preponderance of the evidence that Respondent violated a provision of the Code or a regulation of the Commission, and so his Complaint must be dismissed. 66 Pa.C.S. §§ 332(a), 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Robert Kocher in *Robert Kocher v. Pennsylvania-American Water Co.* at Docket No. C-2023-3038159 is denied.
2. That the matter at Docket No. C-2023-3038159 be marked closed.

Dated: August 23, 2023

/s/
Chad L. Allensworth
Administrative Law Judge