

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Margaret Collins	:	
	:	
v.	:	C-2023-3037963
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision finds that Pennsylvania-American Water Company violated Commission regulations when it issued termination notices while Complainant’s dispute was pending. A fine of \$400 is imposed. All other claims against Pennsylvania-American Water Company are dismissed.

HISTORY OF THE PROCEEDING

On January 27, 2023, Margaret Collins (Ms. Collins or Complainant) filed a Formal Complaint against Pennsylvania-American Water Company (PAWC, Respondent, or Company), alleging PAWC is threatening to shut off her service unless a leak is fixed. The Formal Complaint was served on PAWC on January 31, 2023. In her Formal Complaint, Ms. Collins alleges the leak is occurring at a closed curb stop and it is PAWC’s responsibility to fix. Ms. Collins also alleges that PAWC did not appropriately respond to her Right-to-Know requests.

On February 21, 2023, PAWC filed an answer to Ms. Collins' Formal Complaint. In its answer, PAWC admitted or denied the various averments in the Formal Complaint. In particular, PAWC admits it sent multiple notices to Complainant that a service line leak existed at her property and that her service could be terminated if the leak was not repaired. The Company asserts its tariff establishes that the customer is responsible for service pipes. The Company denies that Right-to-Know requests are applicable to the Company.¹

On February 28, 2023, the Commission issued an interim order setting resolution conference. On May 18, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for July 5, 2023 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on May 22, 2023, setting forth various rules that would govern the July 5, 2023 evidentiary hearing.

Both parties appeared at the July 5, 2023 evidentiary hearing. Prior to the hearing, the parties and I participated in off-the-record settlement discussions. Based on those discussions, the parties and I agreed a settlement may be possible but would require further investigation. I informed the parties that I would stay this proceeding while settlement discussions continued and requested a status report be provided to me no later than August 4, 2023. On July 7, 2023, I issued an order staying the proceeding and ordering parties to provide me a status report by August 4, 2023.

After receiving status reports and further communications with the parties by e-mail, I set an evidentiary hearing for October 11, 2023 to address any remaining issues in Ms. Collins' Formal Complaint. On September 6, 2023, the Commission issued a further telephonic hearing notice setting a formal call-in telephonic hearing for this matter for October 11, 2023 at 10:00 a.m. A prehearing order was issued on September 8, 2023, setting forth various rules that would govern the October 11, 2023 evidentiary hearing.

¹ On March 11, 2023, Ms. Collins filed a "Reply to Answer of Respondent Pennsylvania American Water Company" with the Commission. The Commission does not allow replies to answers at the pleadings stage of a proceeding. *See* 52 Pa. Code § 5.1.

The hearing convened as scheduled on October 11, 2023. The Complainant appeared *pro se* and testified. Eight exhibits offered by Complainant were admitted into the record. Counsel for PAWC, Michael A. Gruin, Esquire, appeared and presented the testimony of Mark Misura, Senior Superintendent of Operations, and Bryan Hooks, Field Operation Supervisor. Ten exhibits offered by PAWC were admitted into the record.

The record consists of a 76-page transcript and the above-referenced exhibits. The record closed on November 1, 2023, when I issued an order admitting late filed exhibits and closing the record. For the reasons discussed below, the Complaint will be sustained where PAWC violated Commission regulations by issuing termination notices while Complainant's dispute was pending. All other claims against PAWC are dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Margaret Collins.
2. The Respondent in this case is Pennsylvania-American Water Company.
3. The service address is 224 North Hyde Park Avenue, Scranton, PA 18504.
Tr. 17.
4. Collins Exhibit 1 is a leak investigation notice from PAWC dated August 11, 2022.
5. Collins Exhibit 2 is a letter from PAWC dated October 4, 2022 regarding a consumer service pipe leak at the service address.
6. Collins Exhibit 4 is a letter from PAWC dated October 14, 2022 regarding a ten-day notice of shutoff due to required service line repair.
7. Collins Exhibit 5 is a letter from PAWC dated October 15, 2022 regarding a ten-day notice of shutoff due to required service line repair.

8. Collins Exhibit 7 is a letter from Ms. Collins to PAWC dated December 7, 2022 requesting a written leak report from October 11, 2022 and a report on how PAWC uses fire hydrants to detect water leaks.

9. Collins Exhibit 9 are PAWC customer contact records for Ms. Collins at the service address.

10. Collins Exhibit 10 is a letter from PAWC dated December 13, 2022 regarding a consumer service pipe leak at the service address.

11. Collins Exhibit 11 is Ms. Collins' Formal Complaint.

12. PAWC Exhibit 1 is a notice of leak on customer-owned service pipe dated September 30, 2022.

13. PAWC Exhibit 2 is PAWC work order number 1040446.

14. PAWC Exhibit 3 is PAWC work order number 1044804.

15. PAWC Exhibit 4 is PAWC work order number 1079233.

16. PAWC Exhibit 5 is PAWC work order number 1080524.

17. PAWC Exhibit 6 is PAWC Tariff Rules 4.6 through 4.9.

18. PAWC Exhibit 7 is an aerial map of the intersection of North Hyde Park Avenue and Lafayette Street in Scranton, PA.

19. PAWC Exhibit 8 is a lead water service line replacement agreement.

20. PAWC Exhibit 9 is documentation of Ms. Collins' informal complaint against PAWC filed with the Commission's Bureau of Consumer Services (BCS), Case Number 3872384.

21. PAWC Exhibit 10 is PAWC work order number 1188764.

22. PAWC's leak detection department routinely conducts leak surveys through PAWC's system. Tr. 40.

23. PAWC's leak detection specialists pick up signal noises on hydrants and any other connection to the water main. Tr. 40.

24. When a PAWC leak detection specialist identifies a sound at a certain location, a correlation device is used to pinpoint the exact location of the leak based on the amount of feet from one of the devices. Tr. 40.

25. A PAWC leak detection specialist identified a leak on Ms. Collins' water service line. Tr. 41-45; PAWC Exhibit 3.

26. Ms. Collins received a notice from PAWC on August 11, 2022 that stated a service representative visited the service address to investigate a leak. Tr. 18; Collins Exhibit 1.

27. On September 30, 2022, Ms. Collins received a notice from PAWC that it detected a leak on the customer-owned portion of the water service line at the service address. Tr. 18-19; PAWC Exhibit 1.

28. By October 3, 2022, Ms. Collins contacted PAWC to dispute that there was a leak on the customer-owned portion of the water service line at the service address. Collins Exhibits 9, 11.

29. On October 14, 2022, PAWC issued Complainant a ten-day notice of shutoff due to required service line repair. Collins Exhibit 4.

30. On October 15, 2022, PAWC issued Complainant a ten-day notice of shutoff due to required service line repair. Collins Exhibit 5.

31. PAWC replaced Ms. Collins' service line on July 12, 2023 through PAWC's lead service line replacement program. Tr. 50, 63; PAWC Exhibit 8.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982). Moreover, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960).

Ms. Collins’ Formal Complaint concerns a suspected leak on the customer portion of the water service line at Complainant’s property and the communications Complainant received from PAWC regarding the suspected leak. Subsequent to the filing of the Formal

Complaint, PAWC replaced the water service line at Ms. Collins' property through its lead service replacement program. Tr. 50, 63; Exhibit 8. Therefore, the evidentiary hearing focused on Ms. Collins' allegations that PAWC did not provide her proper notice and communications regarding the possibility that PAWC would terminate service at her property because of a suspected leak on her service line.

Ms. Collins explained that the communications regarding the suspected leak began with an August 11, 2022 notice from PAWC that stated a service representative visited the service address to investigate a leak. Tr. 18; Collins Exhibit 1. In response to the August 11 notice, Ms. Collins testified that she called PAWC and she was told that "they were going to do an investigation on it because they had no notice on my record of anything." Tr. 18. Ms. Collins testified that she next received a notice from PAWC on September 30, 2022 that stated she needed to repair a leak on her water service line or her service would be terminated. Tr. 18-19; PAWC Exhibit 1. Ms. Collins testified that, subsequent to the September 30, 2022 notice, termination notices continued on October 3, 2022; October 14, 2022; October 15, 2022; and December 13, 2022. Tr. 21.

Ms. Collins alleged PAWC improperly threatened termination of her water service as follows:

- Once a dispute is initiated, per 52 Pa. Code § 56.151, a utility cannot issue a termination notice based on the disputed subject matter, and a customer must be provided information and a response within 30 days. Per 52 Pa. Code § 56.152, service will not be terminated pending completion of a dispute process and, that if the complaining party does not agree with the utility, a report will be filed with the Commission to preserve the complaining party's rights. Ms. Collins alleges that PAWC did not follow the above regulations but kept initiating terminations and sending termination letters. Tr. 19.
- PAWC threatened to terminate her service during the winter moratorium. Tr. 19-20.
- PAWC threatened to terminate her service solely as a collection device. Tr. 19-20.
- PAWC's September 30, 2022 notice omitted the possibility that a service line replacement could be covered by the lead pipe replacement program, which is not in

compliance with PAWC's "approved plan", 66 Pa.C.S. §§ 501(c), 1352(b)(2), 1353, 1501, 3205(a), and 3308, as well as 52 Pa. Code §§ 56.1(a) and 56.99. Tr. 20-21.

Consistent with her Formal Complaint where she alleged a Right-to-Know Law violation, Ms. Collins also asserted that she was refused information, and she cites to a letter dated December 7, 2022 as support. Tr. 21; Collins Exhibit 7.

Counsel for PAWC asserted that PAWC is permitted to terminate service if a leak is not being repaired. Tr. 72-73. Counsel for PAWC also noted that the termination notices were issued before the BCS case was opened on October 18, 2022, and after it was closed on December 6, 2022, but no termination notices were issued during the pendency of the BCS complaint or the pendency of the Formal Complaint process. Tr. 73.

Of Ms. Collins' allegations, I find that substantial evidence exists that PAWC improperly sent Ms. Collins' termination notices dated October 14, 2023 and October 15, 2023 while a dispute concerning the subject matter of the termination notices was pending. Several sections of the Commission's regulations prohibit a public utility from threatening termination of a customer's service after an initial inquiry or dispute is presented. Specifically, Chapter 56 of the Commission's regulations states that:

A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, informal or formal complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void.

52 Pa. Code § 56.92.

Chapter 56 also provides that:

When a customer is waiting for a follow-up response to an initial inquiry under § 56.2 (relating to definitions), termination or threatening termination of service for the subject matter relating to the inquiry in question shall be prohibited until the follow-up

response and, when applicable, subsequent dispute resolution is completed by the public utility.

52 Pa. Code § 56.140.

Finally, Chapter 56 states that “[u]pon initiation of a dispute covered by this section, the public utility shall...[n]ot issue a termination notice based on the disputed subject matter.” 52 Pa. Code § 56.151(1). Although counsel for PAWC argued that no termination notice was issued before the BCS case was opened on October 18, 2022, the above-cited Commission regulations do not require an initial inquiry or dispute to escalate to the informal or formal complaint stage before a public utility must stop termination actions.

PAWC’s customer contact records include a note dated October 3, 2022 that Ms. Collins had a dispute with PAWC regarding the alleged leak on her service line. The PAWC customer contact records introduced at the hearing end on February 22, 2023, and indicate that the dispute was still ongoing at that time. Collins Exhibit 9. Ms. Collins’ Formal Complaint also indicate that Ms. Collins contacted PAWC on October 3, 2022, disputing that there was a leak on her portion of the service line. Collins Exhibit 11, ¶ 4. Therefore, it is clear that Ms. Collins had a dispute with PAWC regarding the leak on her service line as early as October 3, 2022.

Although Ms. Collins had a dispute with PAWC regarding the leak on her service line by October 3, 2022, she received two termination notices from PAWC: one dated October 14, 2023 and another dated October 15, 2023. Both notices clearly state that the termination was due to the alleged leak in Ms. Collins’ service line. Collins Exhibits 4, 5. Both notices were issued while Ms. Collins’ dispute with PAWC regarding the leak was ongoing. As noted above, Commission regulations do not allow a public utility to issue a termination notice based on the disputed subject matter when the dispute is ongoing. Therefore, both the October 14, 2023 and October 15, 2023 termination notices were sent in violation of the Commission’s regulations at 52 Pa. Code §§ 56.92, 56.140, and 56.151(1).

However, I do not find that the record contains substantial evidence to support Ms. Collins’ other allegations. During her testimony, Ms. Collins alleged that, in addition to the

letters dated October 14, 2022 and October 15, 2022, she received termination notices dated September 30, 2022, October 3, 2022, and December 13, 2022. Tr. 18-19, 21; *see* PAWC Exhibit 1; Collins Exhibits 2, 10. Although these three other notices reference the possibility of termination if the leak is not fixed, it is the notices dated October 14, 2022 and October 15, 2022 that clearly constitute termination notices within the context of Chapter 56. *See* 52 Pa. Code § 56.91. Regarding Ms. Collins' remaining claims, the record does not contain sufficient evidence that PAWC did not perform its other duties under 52 Pa. Codes §§ 56.151 and 56.152, or that PAWC threatened her with termination during the winter moratorium or solely as a collection device in violation of 52 Pa. Codes §§ 56.99 and 56.100. Although PAWC did replace Ms. Collins' service line through its lead service line replacement program, Ms. Collins did not demonstrate how PAWC's communications, or lack thereof, regarding its lead service line replacement program violated the Public Utility Code, Commission regulations, or an order of the Commission.

Ms. Collins' Formal Complaint also alleged that PAWC failed to provide her records when she requested them, violating Pennsylvania's Right to Know Law. As a preliminary matter, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code, 66 Pa.C.S. §§ 101–3316, and Pennsylvania's Right-to-Know Law is found at 65 P.S. §§ 67.101–67.3104. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Therefore, it is not within the Commission's jurisdiction to resolve a dispute regarding the Right-to-Know Law. Nonetheless, I note that Ms. Collins' request was for an October 11, 2022 written leak report (Collins Exhibit 7), and PAWC provided a service order record for the inspection on October 11, 2022 (PAWC Exhibit 3). PAWC witness Misura explained that additional reports regarding leak investigations do not exist. Tr. 47-48.

Penalty

Penalties may be imposed where violations of the Code and Commission regulations or a Commission Order are found. *See* 52 Pa. Code § 69.1201; *see also* *Rosi v. Bell-*

Atlantic Pa., Inc., Docket No. C-00992409 (Opinion and Order entered February 10, 2000). As explained above, two acts by PAWC violated the Commission's regulations, i.e., PAWC sent Ms. Collins termination notices dated October 14, 2023, and October 15, 2023 while a dispute was pending, violating the Commission's regulations at 52 Pa. Code §§ 56.92, 56.140, 56.151(1).

Having found a violation of Commission regulations regarding PAWC issuing two separate termination notices to Ms. Collins, the Commission is authorized to impose a maximum civil penalty of \$1,000 per day. 66 Pa.C.S. § 3301. The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) other relevant factors. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." *Id.* There is no evidence that the violations here were willful fraud or misrepresentations and therefore a lower penalty is warranted.

The second factor considers whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* The violation here did not result in personal injury or property damage. This supports a lower penalty.

The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). There is no evidence that the violations here were intentional, as opposed to being the result of internal miscommunication. This supports a lower penalty.

The fourth factor to be considered is whether PAWC made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). PAWC did not admit its error here or make any efforts to modify any policies or procedures to address the alleged conduct at issue. This supports a higher penalty.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Here, one customer was affected. This suggests that a lower penalty is warranted.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). The provision provides that “[a]n isolated incident from an otherwise compliant company may result in a lower penalty.” *Id.* There is no basis to find that PAWC has an unfavorable compliance history. This warrants a lower penalty.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). This factor is not applicable here.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Again, there is no record that termination of service while a dispute is pending is a systemic problem at PAWC and therefore this factor suggests a lower penalty.

The ninth factor examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). No similar situations were found.

Finally, the tenth factor considers any other relevant factor. 52 Pa. Code § 69.1201 (c)(10). There are no other relevant factors to consider.

After considering the above factors, I find that a penalty of \$200 for each separate termination notice is appropriate here. PAWC will be ordered to pay a total penalty of \$400.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).
4. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

5. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961).

9. Mail or delivery of a notice of termination is prohibited if a notice of initial inquiry, dispute, informal or formal complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. 52 Pa. Code § 56.92.

10. Termination or threatening termination of service pending a response to a public utility customer's inquiry is prohibited. 52 Pa. Code § 56.140.

11. A public utility should not issue a termination notice after initiation of a dispute and should take steps to investigate the dispute. 52 Pa. Code § 56.151.

12. The Complainant has established by a preponderance of the evidence that PAWC violated 52 Pa. Code §§ 56.92, 56.140, and 56.151 when it sent two separate termination notices to Complainant while a dispute was pending.

13. The Complainant did not establish by a preponderance of the evidence that PAWC otherwise violated the Public Utility Code, Commission regulations, or an order of the Commission.

14. A fine is warranted because the Company violated 52 Pa. Code §§ 56.92, 56.140, and 56.151.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Margaret Collins at Margaret Collins v. Pennsylvania-American Water Company, Docket No. C-2023-3037963, is granted in part and denied in part.

2. That the claim that the Pennsylvania-American Water Company violated Pennsylvania Public Utility Commission regulations by issuing two termination notices to the Complainant while a dispute was pending is granted.

3. That all other claims are denied and dismissed.

4. That, within thirty (30) days of the entry of a final Commission Order in this proceeding, Respondent Pennsylvania-American Water Company shall remit four hundred dollars (\$400.00) as a civil penalty payable by certified check or money order to

