

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

Public Meeting held August 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Margaret Collins

C-2023-3037963

v.

Pennsylvania-American Water Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Ms. Margaret Collins (Complainant or Ms. Collins) on February 23, 2024. The Exceptions were filed in response to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) John M. Coogan, which was served on the Parties on January 29, 2024. No replies to the Exceptions were filed. For the reasons discussed below, we shall deny the Complainant's Exceptions; adopt the Initial Decision of ALJ Coogan; and grant, in part, and deny, in part, the Complaint, consistent with this Opinion and Order.

I. History of Proceeding

On January 27, 2023, Ms. Collins filed a Formal Complaint (Complaint) against Pennsylvania-American Water Company (PAWC) with the Commission.¹ In the Complaint, Ms. Collins alleged, *inter alia*, that PAWC: (1) is threatening to, or already has, shut off her water service as the result of a service line leak on her property; and (2) failed to respond to her Right-to-Know requests. Complaint at 2-5; I.D. at 1.

On February 21, 2023, PAWC filed its Answer to the Complaint (Answer), admitting, in part, and denying, in part, various material allegations raised in the Complaint.² Of particular note, PAWC admitted that it sent multiple notices to the Complainant that a service line leak existed at her property and that her service would be terminated if the leak was not repaired. Answer at 1-2; I.D. at 2.

On March 30, 2023, a three-page document labeled as “Additional Info to FC – M Collins” was filed with the Commission.

By Hearing Notice dated May 18, 2023 (Hearing Notice), an Initial Telephonic Hearing was scheduled for July 5, 2023, at 10:00 a.m. The Hearing Notice included the date, location, and time of the hearing. I.D. at 2.

¹ We note that the Commission’s case management system indicates the Complaint was received January 27, 2023, but was not served until January 31, 2023. We further note that the Complaint is stamped “DATE OF DEPOSIT” by the Commission’s Secretary’s Bureau on January 27, 2023. *See*, Complaint at 1-2, 9-10, 12-15, 25.

² The ALJ noted that on March 11, 2023, the Complainant filed a “Reply to Answer of Respondent [PAWC]” with the Commission. However, the Commission does not allow replies to answers at the pleadings stage of a proceeding. I.D. at 2 (citing 52 Pa. Code § 5.1).

On July 5, 2023, the evidentiary hearing was held as scheduled. The Complainant appeared *pro se* and the Company was represented by counsel. Prior to the start of the hearing, the Parties and the ALJ participated in off-the-record settlement discussions. As a result of those discussions, the Parties and the ALJ agreed that a settlement may be possible but would require further investigation. I.D. at 2; Tr. at 2-7. Consequently, on July 7, 2023, the ALJ issued an order staying the proceeding and ordering that the Parties provide the ALJ a status report by August 4, 2023. Upon receipt of the status reports and further communications with the Parties, the ALJ set an evidentiary hearing for October 11, 2023. I.D. at 2.

By Hearing Notice dated September 6, 2023 (Further Hearing Notice), a Further Telephonic Hearing was scheduled for October 11, 2023, at 10:00 a.m. The Further Hearing Notice included the date, location, and time of the hearing. I.D. at 2.

On October 11, 2023, the further evidentiary hearing was held as scheduled (October 11 Hearing). The Complainant appeared *pro se*, testified on her own behalf, and offered eight exhibits (Collins Exhibits 1-2, 4-5, 7, 9-11) which were admitted into the record. The Company was represented by counsel and presented the testimony of two witnesses: (1) Mr. Mark Misura (Mr. Misura), Shift Superintendent of Operations; and (2) Mr. Bryan Hooks, Field Operation Supervisor. The Company also offered eight exhibits (PAWC Exhibits 1 – 8) which were admitted into the record as evidence. I.D. at 3; Tr. at 29, 69-70.

The record closed on November 1, 2023, when the ALJ issued an Order admitting late-filed exhibits (PAWC Exhibits 9-10) and closing the record.³ I.D. at 3.

³ We note that on November 13, 2023, a corrected version of the October 11 Hearing Transcript was filed, which included references to PAWC Exhibits 9-10.

In the Initial Decision issued on January 29, 2024, the ALJ: (1) sustained the Complaint where the Company violated the Commission’s Regulations by issuing termination notices while the Complainant’s dispute was pending; (2) imposed a \$400 fine; and (3) dismissed all other claims against the Company. I.D. at 1, 3, 13.

As previously noted, on February 23, 2024, the Complainant filed Exceptions. The Company did not file replies to the Exceptions.

II. Discussion

A. Legal Standards

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. 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*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. 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*, 602 A.2d 863 (Pa. 1992). That is, the Complainant’s evidence must be more convincing,

by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *See, id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See, Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See, Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See, Milkie*, 768 A.2d at 1220; *see also, Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See, Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission.

See, Milkie, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n. 11 (Pa. Cmwlth. 1993); *see also, Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder⁴ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore*, citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*).

B. Positions of the Parties

The Complaint, essentially, centers on the Complainant's averments regarding a suspected leak on the customer portion of the water service line at the Complainant's property and the communications the Complainant received from the Company regarding that suspected leak. Complaint at 2-5. PAWC admitted that it sent the Complainant several notices to inform her of a service line leak at her property, the need to have the leak repaired, and that her service could be terminated if the leak was not repaired. Answer at 1. However, because the Complainant's service line qualified for the Company's lead service line replacement program, PAWC replaced the water service line at the Complainant's property. Tr. at 50, 63-65; PAWC Exh. 8. Accordingly, the October 11 Hearing focused on the Complainant's allegations that PAWC failed to provide her proper notice and communications regarding the possibility that the

⁴ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

Company would terminate service at her property due to a suspected leak on her service line.

The Complainant testified that the communications regarding the suspected leak began with a notice from the Company dated August 11, 2022, which stated a service representative visited the service address that day to investigate the leak (August 11 Notice). Tr. at 18; Collins Exh. 1. The Complainant further testified that on September 30, 2022, she received another notice (door hanger) from the Company stating that she needed to repair a leak on her water service line or her service would be terminated (September 30 Notice). Tr. at 18-19; PAWC Exh. 1. The Complainant further testified that she continued to receive notices regarding the leak on October 3, 2022; October 14, 2022 (October 14 Notice); October 15, 2022 (October 15 Notice); and December 13, 2022 (December 13 Notice).⁵ Tr. at 21; Collins Exhs. 4, 5, 10. The Company admitted that it made several visits to the Complainant's home, left door tags at the Complainant's home, and sent several letters to the Complainant to confirm that there was, in fact, a service line leak at the Complainant's property. The Company also admitted that it issued termination notices to the Complainant. Tr. at 49, 51-52, 73. Both the Company and the Complainant noted that the Complainant's water service was not terminated. Tr. at 32, 49, 61.

C. Initial Decision

The ALJ made thirty-one Findings of Fact (FOF) and reached fourteen Conclusions of Law (COL). I.D. at 3-5, 13-15. We shall adopt and incorporate herein by

⁵ We note that although the Hearing Transcript indicates that the Complainant testified that she received a termination notice on October 3, 2022, there is no such notice with that date on the record. However, Collins Exhibit No. 2 is a notice addressed to the Complainant, dated October 4, 2022 (October 4 Notice). *See*, Collins Exh. 2; Tr. at 21.

reference the ALJ's FOF and COL, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Initially, the ALJ summarized the Complainant's allegation that the Company improperly threatened to terminate her water service:

- 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 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. at 20-21.

I.D. at 7-8 (citing Tr. at 19-21). The ALJ also noted that consistent with her Complaint, where she alleged a Right to Know Law violation, the Complainant asserted that she was refused information based on a letter she issued to PAWC dated December 7, 2022.

I.D. at 8 (citing Tr. at 21; Collins Exh. 7).

The ALJ also noted that counsel for PAWC asserted that: (1) the Company is permitted to terminate service if a leak is not being repaired; (2) 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 Informal Complaint or the Complaint process.⁶ I.D. at 8 (citing Tr. at 72-73).

The ALJ found that substantial evidence exists that the Company improperly sent two termination notices, *i.e.*, the October 14 Notice and the October 15 Notice, while a dispute concerning the subject matter of the termination notices was pending. The ALJ noted that 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. The ALJ reasoned that while counsel for PAWC argued that no termination notice was issued before the BCS case was opened on October 18, 2022, Commission Regulations do not require an initial inquiry or dispute to escalate to the informal or formal complaint stage before a public utility must cease the action of termination. I.D. at 8-9 (citing 52 Pa. Code §§ 56.92, 56.140, 56.151(1)).

According to the ALJ, it is clear that the Complainant had a dispute with the Company regarding the alleged leak on her service line as early as October 3, 2022, based on: (1) the Company's customer contact records, which: (a) include a note dated October 3, 2022, indicating that the Complainant had a dispute with the Company regarding the leak on the service line; and (b) end February 23, 2023, indicating that the dispute was ongoing when the records were introduced at the hearing; and (2) the Complaint, which indicates that Ms. Collins contacted PAWC on October 3, 2022, disputing that there was a leak on her portion of the service line. I.D. at 9 (citing Collins Exhs. 9, 11 at ¶ 4).

⁶ PAWC Exhibit No. 9 is documentation of the Complainant's Informal Complaint against PAWC, filed with the Commission's Bureau of Consumer Services (BCS), Case Number 3872384. I.D. at 4, FOF No. 20 (citing PAWC Exh. 9).

The ALJ also reasoned that while the Complainant had a dispute with the Company regarding the leak on her service line as of October 3, 2022, she received the October 14 Notice and the October 15 Notice, both of which: (1) state that the termination was the result of the alleged leak in the Complainant's service line; and (2) were issued while the Complainant's dispute with the Company regarding the leak was ongoing. I.D. at 9 (citing Collins Exhs. 4, 5). As such, the ALJ found that because Commission Regulations do not allow a public utility to issue a termination notice based on the disputed subject matter while the dispute is ongoing, both the October 14 Notice and the October 15 Notice were sent in violation of the Commission's Regulations at 52 Pa. Code §§ 56.92, 56.140, and 56.151(1). I.D. at 9.

However, the ALJ found that the record does not include substantial evidence to support the Complainant's other allegations. Specifically, the ALJ found that although the October 14 Notice and the October 15 Notice clearly constitute termination notices within the context of Chapter 56, the other three notices (*i.e.*, the September 30 Notice; the October 4 Notice; and the December 13 Notice) only reference the possibility of termination if the leak is not fixed. I.D. at 9-10 (citing PAWC Exh. 1; Collins Exhs. 2, 10; Tr. at 18-19, 21; 52 Pa. Code § 56.91). Further, the ALJ found that the record does not contain sufficient evidence to support the Complainant's remaining claims that the Company did not perform its other duties under 52 Pa. Code §§ 56.151 and 56.152, or that the Company threatened her with termination during the winter moratorium or solely as a collection device, in violation of 52 Pa. Code §§ 56.99 and 56.100. The ALJ reasoned that although the Company did replace the Complainant's service line through its lead service line replacement program, the Complainant did not demonstrate how the Company's communications (or lack thereof) regarding the program violated the Code, Commission Regulations, or a Commission order. I.D. at 10.

The ALJ then addressed Ms. Collins' allegation that the Company violated Pennsylvania's Right-to-Know Law (RKL) by failing to provide her records when she

requested them. The ALJ found that it is not within the Commission's jurisdiction to resolve a dispute regarding the RKL. I.D. at 10 (citing 66 Pa.C.S. §§ 101-3316; 65 P.S. §§ 67.101-67.3104). Notwithstanding, the ALJ noted that the Complainant's request was for an October 11, 2022, written leak report (Collins Exhibit No. 7), and the Company provided a service order record for the inspection on October 11, 2022 (PAWC Exhibit No. 3). Further, the ALJ noted that Mr. Misura explained that additional reports regarding leak investigations do not exist. I.D. at 10 (citing Tr. at 47-48).

The ALJ then turned to the penalty to be imposed because the Company sent the Complainant termination notices (*i.e.*, the October 14 Notice and the October 15 Notice), while a dispute was pending, a violation of 52 Pa. Code §§ 56.92, 56.140, and 56.151(1). I.D. at 10-11 (citing *Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered February 10, 2000); 52 Pa. Code §§ 56.92, 56.140, 56.151(1), 69.1201). The ALJ reasoned that because PAWC violated Commission Regulations by issuing two separate termination notices to the Complainant, the Commission is authorized to impose a maximum civil penalty of \$1,000 per day. I.D. at 11 (citing 66 Pa.C.S. § 3301). As such, the ALJ referred to the Commission's Policy Statement, which 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. I.D. at 11 (citing 52 Pa. Code § 69.1201(c)(1)-(10)).

Regarding the first factor, which considers whether the conduct at issue was of a serious nature and, if so, whether the conduct may warrant a higher penalty, the ALJ found that there is no evidence that the violations here were willful fraud or misrepresentations and, therefore, a lower penalty is warranted. Regarding the second factor, which considers whether the resulting consequences of the conduct in question were of a serious nature, the ALJ found that a lower penalty is supported because the violation here did not result in personal injury or property damage. Similarly, the ALJ

found that a lower penalty is supported under the third factor, which considers whether the conduct at issue was deemed intentional or negligent, because there is no evidence that the violations here were intentional, as opposed to being the result of internal miscommunication. Under the fourth factor, which considers whether the Company made efforts to modify its internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future, the ALJ found that a higher penalty is supported because PAWC did not admit its error or make any effort to modify any policies or procedures to address the alleged conduct at issue. Regarding the fifth factor, which considers the number of customers affected and the duration of the violation, the ALJ reasoned that a lower penalty is warranted because only one customer was affected. I.D. at 11-12 (citing 52 Pa. Code § 69.1201(c)(1)-(5)).

Regarding the sixth factor, which considers compliance history, the ALJ reasoned that because there is no basis to find that the Company has an unfavorable compliance history, a lower penalty is warranted. The ALJ noted that the seventh factor, which considers whether the regulated entity cooperated with the Commission's investigation, is not applicable here. In addressing the eighth factor, which is determining the amount of the civil penalty or fine necessary to deter future violations, the ALJ reasoned that a lower penalty is supported because there is no record that termination of service while a dispute is pending is a systemic problem at the Company. Under the ninth factor, which examines past Commission decisions in similar situations, the ALJ noted that no similar situations were found. Finally, the ALJ found that there were no other relevant factors to consider under the tenth factor. I.D. at 12-13 (citing 52 Pa. Code § 69.1201(c)(6)-(10)).

Accordingly, after considering the ten factors under the Commission's Policy Statement, the ALJ found that a penalty of \$200 for the two separate termination notices is appropriate here. As such, the ALJ ordered PAWC to pay a total penalty of \$400. I.D. at 13.

D. The Complainant's Exceptions

In her Exceptions, the Complainant disputes the ALJ's finding that the September 30 Notice, the October 4 Notice, and the December 13 Notice do not constitute termination notices within the context of Chapter 56. Exc. at 1-2 (citing I.D. at 9-10). According to the Complainant, these three notices: (1) state the 10-day notice requirement within the termination context per 52 Pa. Code § 56.91; (2) threatened termination of service pending a response to a customer's inquiry, a violation of 52 Pa. Code § 56.140; (3) were mailed and delivered while the initial inquiry, dispute, informal or formal complaint was pending or ongoing, a violation of 52 Pa. Code § 56.92; and (4) were issued after initiation of the dispute on August 11, 2022. The Complainant further disputes, *inter alia*, that PAWC did not: (1) investigate the dispute within thirty (30) days of the initiation of the dispute, a violation of 52 Pa. Code § 56.151; and (2) issue its report to the Complainant nor inform the Complainant that the report is available upon request, a violation of 52 Pa. Code § 56.151(5). Exc. at 2-3, 5-6.

The Complainant also disagrees with the ALJ's finding that the record does not contain sufficient evidence that the Company: (1) did not perform its other duties under 52 Pa. Code §§ 56.151 and 56.152; or (2) threatened her with termination during the winter moratorium or solely as a collection device, a violation of 52 Pa. Code §§ 56.99 and 56.100. Exc. at 3-4 (citing I.D. at 10). According to the Complainant, both the December 13 Notice and the September 30 Notice fall within the winter moratorium and demonstrate a violation of 52 Pa. Code § 56.100.⁷ Exc. at 4. Further, the Complainant contends that, essentially, the Company's lack of communication regarding its lead service line replacement program is a violation of the Code and Commission Regulations. Exc. at 4-5 (citing 52 Pa. Code §§ 56.151-2).

⁷ Although the Complainant makes several references to a "notice" dated December 28, 2022, there is no record evidence of such a notice or letter with that specific date. Exc. at 4.

Regarding the ALJ's determination of the penalty, the Complainant disagrees with the ALJ's findings for several of the Commission's Policy Statement factors under 52 Pa. Code § 69.1201, arguing that a higher penalty should be imposed on PAWC. Exc. at 6 (citing 52 Pa. Code § 69.1201). Specifically, the Complainant refers to the first factor to argue that the conduct at issue was of a serious nature that involved, *inter alia*, willful fraud and misrepresentation. Exc. at 6-7 (citing I.D. at 11; PAWC Exh. at 4; Collins Exhs. 9 at 9, 11 at 1-3; Tr. at 21-22, 44-45, 48; 52 Pa. Code §§ 54.43(f), 69.1201(c)(1)). The Complainant also argues that under the second factor, the conduct in question was of a serious nature because she "experienced personal injury and property damage."⁸ Exc. at 7-8 (citing I.D. at 12; Tr. at 47, 57; 66 Pa.C.S. § 3308; 52 Pa. Code §§ 5.349, 56.92, 56.140, 56.151(1)(4)(5)(i), 69.1201(c)(2)). The Complainant also argues that contrary to the ALJ's finding under the third factor, the conduct here was intentional and negligent. Exc. at 8 (citing I.D. at 12; PAWC Exh. 9; Collins Exhs. 9 at 9, 11 at 2; Tr. at 22, 65; 52 Pa. Code § 69.1201(c)(3)). Under the fifth factor, the Complainant disputes the ALJ's finding that only one customer was affected, arguing that more than 30,000 customers in Scranton and Dunmore were affected. Exc. at 9 (citing I.D. at 12; Collins Exhs. 9 at 9, 11 at 1-3; Tr. at 44, 48; 66 Pa.C.S. § 1352(b)(2); 52 Pa. Code § 69.1201(c)(5)). In dispute of the ALJ's finding under the sixth factor that there is no basis to find that the Company has an unfavorable compliance history, the Complainant

⁸ Given the nature of the substance of the Complainant's claim in her Exceptions that she sustained personal injury or property damage (which, we note, she is claiming for the first time in this proceeding), we find it appropriate to reprint a brief sample passage of the Complainant's explanation for this claim:

Each [termination] notice landed the intended one-two punch – a kick to the gut and a dagger to the chest...all the while knowing the 10 day termination was ticking ... This deliberate termination onslaught ...

Exc. at 7.

simply refers to Collins Exhibit 11 at Ex: 6.⁹ Exc. at 10 (citing I.D. at 12; 52 Pa. Code § 69.1201(c)(6)). In dispute of the ALJ’s finding under the eighth factor that there is no record that termination of service while a dispute is pending is a systemic problem at the Company, the Complainant repeats her argument that more than 30,000 customers in Scranton and Dunmore were affected. Exc. at 10 (citing I.D. at 13; PAWC Exh. 1; Tr. at 48; 66 Pa.C.S. § 1352(b)(2); 52 Pa. Code § 69.1201(c)(8)). Finally, regarding the ALJs findings for the ninth and tenth factors, the Complainant, essentially, argues that the Company failed to provide her with records upon request. Exc. at 10-11 (citing I.D. at 13; PAWC. Exh. 9; Tr. at 59; 52 Pa. Code §§ 5.350, 69.1201(c)(9)-(10)).

E. Disposition

At the onset, we note that any argument or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Extra-Record Material Not Considered

As a preliminary matter, we note that the Complainant has filed and made use of extra-record materials. We will disregard the extra-record materials – specifically: (1) on page 8 of her Exceptions, an unsourced quote from an individual at PAWC and the Complainant’s comments addressing that quote; and (2) the single-page document attached to the Exceptions dated October 4, 2023, and entitled: “Defendant Pennsylvania

⁹ We note that Collins Exhibit 11 at Ex: 6 is a copy of a document labeled “American Water: A Corporate Profile – Fact Sheet – November 2013.” *See*, Collins Exh. 11 at Ex: 6.

American Water Company” – as the use of this extra-record information by the Commission would violate PAWC’s due process rights. Exc. at 8, 14 (emphasis omitted).

It is well-established that parties cannot introduce new evidence at the exceptions stage. *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45 at *8-14 (Opinion and Order entered February 10, 1994) (*Apollo Gas*). The unsourced quote and the attachment to the Exceptions are introduced for the first time in the Complainant’s Exceptions and are not in the record.¹⁰ Exc. at 8, 14. As noted earlier, the record closed on November 1, 2023. I.D. at 3. Furthermore, the Complainant’s comments addressing the unsourced quote and the attachment to the Exceptions, by themselves, do not constitute Exceptions, and were introduced more than three months after the record closed on November 1, 2023. As such, the Complainant’s extra-record evidence cannot be admitted into the record at this current procedural stage of the case. Therefore, we must reject this extra-record evidence introduced at the Exception stage. *Apollo Gas*.

2. Substance of the Exceptions

The crux of the Complainant’s Exceptions are that the ALJ erred in: (1) finding that the September 30 Notice, October 4 Notice, and the December 13 Notice do not constitute termination notices within the context of Chapter 56 of the Commission’s Regulations; and (2) his determination of the penalty to be imposed on PAWC. Upon review of the record, we agree with the ALJ that the Complainant established, by a preponderance of the evidence, that PAWC violated 52 Pa. Code §§ 56.92, 56.140, and 56.151(1) when it issued both the October 14 Notice and October 15 Notice to the Complainant while a dispute was pending. *See*, I.D. at 9, 15, FOF No. 12. Further, we agree with the ALJ that although the September 30 Notice, October 4

¹⁰ We note that the Complainant states that she only “became aware” of the subject matter in this unsourced quote “since the hearing.” Exc. at 8.

Notice, and the December 13 Notice reference the possibility of termination if the leak is not fixed, it is the October 14 Notice and October 15 Notice that clearly constitute termination notices within the context of Chapter 56. *See*, I.D. at 9 (citing 52 Pa. Code § 56.91). Indeed, both the October 14 Notice and October 15 Notice state, *inter alia*, that “[u]ntil the service line is repaired, we will shut off water to [the service address] on or after 8:00 AM on 10/24/2022.” Collins Exhs. 4, 5.

Additionally, we agree with the ALJ that the record does not contain substantial evidence to support the Complainant’s other allegations (*i.e.*, that PAWC otherwise violated the Code, Commission Regulations, or a Commission Order). Indeed, the record does not contain sufficient evidence to demonstrate that PAWC: (1) did not perform its other duties under 52 Pa. Code §§ 56.151 and 56.152; or (2) threatened the Complainant with service termination during the winter moratorium or solely as a collection device, a violation of 52 Pa. Code §§ 56.99 and 56.100. *See*, I.D. at 10. As such, we agree with the ALJ’s finding that the Complainant failed to establish, by a preponderance of the evidence, that the Company otherwise violated the Code, Commission Regulations, or a Commission Order. *See*, I.D. at 9-10, 15, FOF No. 14.

Turning to the Complainant’s challenges to the ALJ’s determination of the penalty to be imposed on PAWC, we find that the basis for much of the Complainant’s argument here is meritless. The Complainant puts forth multiple assertions based on several of the Commission’s Policy Statement factors under 52 Pa. Code § 69.1201 to advance her argument that a higher penalty is warranted. Generally, the Complainant refers to communications and interactions with PAWC representatives to assert that the Company repeatedly demonstrated intentional and negligent conduct which: (1) involved willful fraud and misrepresentation; and (2) impacted an additional 30,000 customers. *See*, Exc. at 6-11. However, the Complainant fails to substantiate any of her assertions challenging the ALJ’s findings under the Commission’s Policy Statement factors. Moreover, we agree with the ALJ’s analysis of the Commission’s Policy Statement

factors in determining the amount of the penalty to be imposed on PAWC. As such, we concur with the ALJ's determination that a penalty of \$200 for each separate termination notice (*i.e.*, the October 14 Notice and October 15 Notice) is appropriate.

Finally, regarding the Complainant's continuing argument that the Company failed to provide records as requested, we note that the Complainant requested that PAWC provide a written leak report and a report on how the Company uses fire hydrants to detect water leaks. *See*, Collins Exh. 7. Further, as noted by the ALJ:

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 [Mr.] Misura explained that additional reports regarding leak investigations do not exist. Tr. 47-48.

I.D. at 10. We agree with the ALJ's analysis. Accordingly, we find the Complainant's argument on this matter has no merit.

In summary, we agree with the ALJ's finding that the Complainant established, by a preponderance of the evidence, that PAWC violated 52 Pa. Code §§ 56.92, 56.140, and 56.151 when it sent the October 14 Notice and the October 15 Notice to the Complainant while a dispute concerning the subject matter of the termination notices was pending. *See*, I.D. at 15, COL No. 12. Accordingly, we agree with the ALJ that because PAWC violated 52 Pa. Code §§ 56.92, 56.140, and 56.151, a fine is warranted. *See*, I.D. at 15, COL No. 14. Further, we concur with the ALJ that a total penalty of \$400 for the two termination notices is appropriate here. Additionally, we concur with the ALJ that the Complainant failed to establish, by a preponderance of the

evidence, that PAWC otherwise violated the Code, Commission Regulations, or a Commission Order. *See*, I.D. at 15, COL No. 13. Accordingly, the Complainant's Exceptions are denied.

III. Conclusion

Upon our review and consideration of the record evidence in this proceeding, we shall deny Margaret Collins' Exceptions, adopt the Initial Decision of ALJ John M. Coogan, and grant, in part, and deny, in part, the Formal Complaint of Margaret Collins, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Margaret Collins on February 23, 2024, at Docket No. C-2023-3037963, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on January 29, 2024, at Docket No. C-2023-3037693, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint of Margaret Collins, filed on January 27, 2023, at Docket No. C-2023-3037693, is granted, in part, and denied, in part, consistent with this Opinion and Order.
4. That, within thirty (30) days of the entry date of this Opinion and Order, Pennsylvania-American Water Company is hereby directed to pay a civil penalty

of four hundred dollars (\$400.00), payable by certified check or money order, to
“Commonwealth of Pennsylvania” and sent to:

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

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

6. That the Bureau of Administrative Services, Assessment Section shall monitor this matter for compliance.

7. That, if Pennsylvania-American Water Company fails to make the civil penalty payment required by Ordering Paragraph No. 4 above within thirty (30) days of the entry of this Opinion and Order, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

8. That upon payment of the civil penalty required by Ordering Paragraph No. 4 above, this proceeding at Docket No. C-2023-3037963 be marked closed.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024