

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Mary Weishner	:	
	:	
v.	:	C-2024-3046232
	:	
Pennsylvania American Water Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of water utility customers because they did not prove that the water utility caused muddy water in their home plumbing. They also did not prove that the water utility’s customer service response was inadequate or that the water utility discriminated against them.

HISTORY OF THE PROCEEDINGS

On January 24, 2024, Michael and Mary Weishner filed a Formal Complaint against Pennsylvania American Water Company (PAWC). The Weishners’ complained that they had experienced dirty, muddy water; that PAWC had not responded

to their customer service calls; and that PAWC discriminated against them because PAWC did not provide them with a water buffalo¹ like their neighbors.

PAWC filed an Answer on February 28, 2024. PAWC denied the material allegations in the complaint. PAWC denied that it discriminated against the Weishners when it did not provide them with a water buffalo or otherwise failed to comply with the requirements of the Public Utility Code.

By interim order entered on March 6, 2024, Chief Administrative Law Judge Charles E. Rainey, Jr. directed the parties to attempt to resolve their dispute with the assistance of mediation. PAWC filed a certificate of satisfaction on June 7, 2024. But by letter dated June 17, 2024, Mr. Weishner objected to the certificate of satisfaction and requested a hearing on the complaint.

By hearing notice dated July 22, 2024, the complaint was assigned to me and scheduled for a hearing by telephone on August 27, 2024. Mr. Weishner promptly notified my office that he had a conflict. Accordingly, the hearing was rescheduled for September 18, 2024. On August 5, 2024, I issued a prehearing order which explained procedures for the conduct of the hearing.

The hearing convened on September 18, 2024, as scheduled. Mr. Weishner appeared and testified on his own behalf. Michael A. Gruin, Esquire appeared and represented PAWC. Mr. Gruin presented the testimony of one witness, Michael Ricculti. PAWC Exhibits 1-3 were admitted into the record.

¹ A water buffalo is a large, portable tank that supplies potable water. *See* Tr. 41-42.

Following closing arguments on September 18, 2024, Mr. Gruin requested an additional day of hearing so that PAWC could present a witness regarding PAWC's customer service center response to the Weishners' water quality concerns.

A further hearing took place on October 31, 2024. Mr. Gruin presented the testimony of an additional witness, Cheryl DiSanti. PAWC Exhibits 4-10, were admitted into the record.

Following the receipt of the transcripts, the record was closed by interim order entered on November 21, 2024. The record consists of PAWC Exhibits 1-10 and a transcript of 159 pages.

FINDINGS OF FACT

1. The Complainants are Michael and Mary Weishner who reside at 420 Country Club Road, Washington, Pennsylvania.
2. The Respondent is Pennsylvania American Water Company, a jurisdictional public utility.
3. Kirk Lane connects with Country Club Road. PAWC Ex. 1.
4. In 2022, PAWC received a request to extend service to serve a new house on 20 Kirk Lane. Tr. 38.
5. Although there was a pre-existing main on Kirk Lane, due to its age and condition, PAWC elected to replace the main. Tr. 39.

6. PAWC began construction on the Kirk Lane main replacement project in May 2023. Tr. 40.

7. Two homes on Kirk Lane were without water service during the project and PAWC provided them with water buffalos. Tr. 41; PAWC Ex. 1.

8. PAWC did not turn off water service to the main on Country Club Road. Tr. 42.

9. After new main pipes are in place, PAWC “blows off” water through the new pipe until two water tests indicate that bacteria levels in the water are acceptable. Tr. 44.

10. The Kirk Lane project blow off began in early August 2023 and continued until August 16, 2023. Tr. 48; PAWC Ex. 2.

11. The Kirk Lane main was put into service on either August 17, 2023, or August 18, 2023. Tr. 48-49.

12. On August 17, 2023, Mary Weishner telephoned the PAWC call center to report that the water coming from the taps in her home appeared to be “yellowish” and included “particles/sediment.” Tr. 13, 104; PAWC Ex. 5.

13. The customer service representative created a water quality notification on August 17, 2023, which was sent to the performance department and to the water quality department. Tr. 105; PAWC Ex. 5.

14. PAWC responded by sending employees to flush two hydrants. Tr. 45; PAWC Ex. 1.

15. PAWC employees chose the hydrants because they were the last two hydrants on the main to pull the water in case there was an issue. Tr. 57; PAWC Ex. 1.

16. PAWC did not contact the Weishners to report that they had flushed two fire hydrants. Tr. 62.

17. It is not PAWC policy to immediately send a field representative to test the water at a location where a customer reports discolored water. Tr. 106; *see also* Tr. 51-52.

18. The local office did not ask field operations employees to visit the Weishner home. Tr. 51, 52.

19. PAWC customer service did not follow up with the Weishners within 24 or 48 hours of the August 17, 2023 telephone call. Tr. 107.

20. On August 21, 2023, Mr. Weishner telephoned the PAWC call center to complain that PAWC had not followed up on his water quality complaint and to complain that he did not receive a water buffalo like his neighbor did. Tr. 109; PAWC Ex. 6.

21. The customer service representative created a Business Process Exception Management (BPEM) notification which would direct the Weishners' concerns to a local PAWC representative to follow up. Tr. 109; PAWC Ex. 6.

22. PAWC field employees received another notice regarding the Weishners' water quality complaint. Tr. 46.

23. PAWC again flushed the hydrants in the vicinity of the Weishners on August 21, 2023. Tr. 46.

24. Mr. Weishner filed an informal complaint with the Commission's Bureau of Consumer Services, initiating a PAWC response from the regulatory team. Tr. 111; *see* PAWC Ex. 10.

25. A PAWC Local Operation Specialist contacted Mr. Weishner on August 23, 2023. Tr. 111; PAWC Ex. 7.

26. PAWC followed up on the August 17, 2023 Weishner call on August 31, 2023. Mr. Weishner continued to complain about the water in his home and the water buffalos that PAWC distributed to his neighbors. Tr. 113; PAWC Ex. 8.

27. Mr. Weishner telephoned the PAWC call center on December 21, 2023. Mr. Weishner spoke to a supervisor and requested reimbursement for a water filtration system. Tr. 116.

28. Following the December 21, 2023 telephone call, PAWC opened a claim with its insurance carrier, Travelers. Tr. 116; PAWC Ex. 9.

29. Travelers denied Mr. Weishner's damage claim. Tr. 117; *see* Tr. 141-42.

30. Mr. Weishner did not provide PAWC with any photographs or water sample results to support his claim regarding poor water quality, nor did Mr. Weishner submit an invoice for the water filtration system. Tr. 117; *see also* Tr. 30-31.

31. A customer's water can be discolored for a variety of reasons, including issues with plumbing or appliances inside a home, hydrant flushing and water main breaks. Tr. 45, 106.

32. There were no water main breaks in the vicinity of Country Club Road in August 2023 or in 2024. Tr. 46, 54.

33. PAWC did not open the main on Country Club Road during the construction of the Kirk Lane main. Tr. 71.

34. It is not possible that water from the Kirk Lane main flowed back to Country Club Road main because the water pressure caused the water to come down Country Club Road and flow up Kirk Lane. Tr. 46, 50.

35. During the blow off period, water would have gone back out of the end of the Kirk Lane main. Tr. 50.

36. There are several other premises served by the main on Country Club Road. PAWC Ex. 1.

37. There were no other reports of water quality issues in the Weishners' area. Tr. 42, 108, 114.

38. As of October 31, 2024, the water coming from the faucets in the Weishner home was not discolored. Tr. 152, 154.

39. Michael Riccuiti, a supervisor of field operations, visited the Weishner home in June 2024. Tr. 51-53.

40. Although the tank for the bathroom toilet had some discoloration, Mr. Riccuiti did not observe muddy ice trays or muddy filters. Tr. 53.

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about anything done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the Commission.² A person who wants the Commission to do something to resolve their complaint has the burden of proof.³

In this matter, the Weishners are asking for relief from the Commission; therefore, they have the burden of proof. This means, that the Weishners must present facts which support their claims and show that the PAWC violated the Public Utility Code, a regulation or Commission order by a preponderance of the evidence.⁴ The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁵

Generally, the Weishners allege PAWC failed to provide them with reasonable and adequate service. Specifically, according to the Weishners, PAWC failed to provide them with adequate water quality and failed to provide them with reasonable customer service in response to their water quality complaint.

² 66 Pa.C.S. § 701.

³ 66 Pa.C.S. § 332(a).

⁴ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁵ *Popowsky*.

Section 1501 of the Code,⁶ mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.⁷ However, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service, nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.^[8]

Thus, the test to determine the adequacy of a utility's service and facilities is that of "reasonableness."⁹ This is also the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities.¹⁰

Water Quality

The Weishners first allege that their water was muddy for several weeks. Mr. Weishner described sediment in his appliances, which had to be replaced due to damage from mud and sediment.¹¹ Ice cubes from the automatic ice maker were muddy

⁶ 66 Pa.C.S. §1501.

⁷ 66 Pa.C.S. §1505; *See West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984).

⁸ *Re Metropolitan Edison Co.*, 80 Pa.P.U.C. 663, 672 (1993).

⁹ *Thurby v. West Penn Power*, Docket No. C-2011-2254048 (Order entered Apr. 4, 2013) (*Thurby*); *Bertsch v. PPL Elec. Utils. Corp.*, Docket No. C-2011-2251784 (Final Order entered Apr. 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order Jan. 28, 2010).

¹⁰ *Thurby*.

¹¹ *E.g.* Tr. 16, 17.

and had to be thrown out.¹² Mr. Weishner testified that he installed a water filtration system that had to be removed because it became choked with mud.¹³

As of the hearing, Mr. Weishner testified that there was residue in his hot water tank and that on occasion, a piece of gunk would break free and cause problems with his toilets.¹⁴ In Mr. Weishner's view, the mud and sediment in his plumbing was caused by the water main construction project on Kirk Lane.

Mr. Ricuitti, PAWC's witness, explained that the construction and blow off of the main on Kirk Lane could not have caused the problems described by Mr. Weishner. The construction to replace the main on Kirk Lane began in May 2023. After the main was in place, PAWC performed a "blow off" to run water through the new pipe until two water tests indicated that bacteria levels in the water are acceptable. The blow off for the new Kirk Lane main began in early August and continued until August 16, 2023.

A customer's water can be discolored for a variety of reasons, including issues with plumbing or appliances inside a home, hydrant flushing and water main breaks. According to Mr. Ricuitti, it is not possible that water from the Kirk Lane main flowed back to Country Club Road and affected the Weishner's property. PAWC did not open the main on Country Club Road during the construction of the Kirk Lane main. Also, the water pressure in the system causes the water to come down Country Club Road and flow up Kirk Lane. During the blow off period, water would have gone out of the end of the main where the water was blowing off, not into the main on Country Club Road. Further, no other customers served by the Country Club Road main contacted PAWC to report muddy or discolored water.

¹² Tr. 16.

¹³ Tr. 33.

¹⁴ *E.g.*, Tr. 19, 122, 149, 152, 153.

Mr. Ricuitti also noted that there were no activities by PAWC which could have caused muddy water in the Weishners' home. There have not been any main breaks in the vicinity of the Weishners' home in 2023 or 2024.

Mr. Weishner's belief that the muddy water in his home was caused by the PAWC project on Kirk Lane is not supported by any evidence in the record. Mr. Weishner's opinion does not rebut Mr. Ricuitti's explanation of the flow of water in the main on Country Club Road and on Kirk Lane.¹⁵ There are several other premises served by the main on Country Club Road, and none of these customers contacted PAWC to report discolored or muddy water. A home's plumbing or appliances can cause water quality problems in the home. Therefore, I must conclude that the Weishners did not sustain their burden of proving that PAWC caused the muddy water in their home.

Customer Service Response

The Weishners also complained that PAWC did not adequately respond to their report of muddy water in their home. According to Mr. Weishner, he and his wife contacted PAWC several times, but PAWC did not respond or adequately investigate their complaint.

PAWC witness Cheryl DiSanti conceded that the customer service response to the Weishners could have been better. However, in her view, PAWC adequately investigated their complaint and did respond to the Weishners.

¹⁵ Assertions, personal opinions or perceptions do not constitute factual evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atl. Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000).

The Weishners first contacted PAWC on August 17, 2023. The customer service representative told them that someone would update them within 24 or 48 hours. There is no dispute that no PAWC representative contacted the Weishners within that timeframe. However, PAWC did send field personnel to flush two fire hydrants near the Weishner's home.

The Weishners again contacted PAWC on August 21, 2023, to complain that their water issue had not resolved and that PAWC did not provide them with a water buffalo like their neighbors on Kirk Lane. The customer service representative created a BPEM notification which would direct the Weishner's concerns to a local PAWC representative to follow up. A PAWC Local Operation Specialist contacted Mr. Weishner on August 23, 2023. PAWC also contacted Mr. Weishner on August 31, 2023. Mr. Weishner continued to complain about the water in his home and the water buffalos that PAWC distributed to his neighbors.

Also in late August 2023, Mr. Weishner filed an informal complaint with the Commission's BCS. BCS complaints are investigated by another PAWC division. The BCS complaint was dismissed on December 21, 2023. That day, Mr. Weishner again contacted PAWC customer service. Mr. Weishner spoke to a supervisor and requested reimbursement for a water filtration system. Following the December 21, 2023, telephone call, PAWC opened a claim with its insurance carrier, Travelers.

I agree with Ms. DiSanti that PAWC's customer service response to the Weishners could have been improved with better coordination among PAWC's various customer service and water quality teams and more timely updates to the Weishners. However, as explained above, the law does not require a public utility to render perfect service.¹⁶ PAWC customer service did refer the Weishners' water quality complaint to

¹⁶ *Re Metro. Edison Co.*, 80 Pa.P.U.C. 663 (1993).

field services. On two occasions, field services flushed fire hydrants on the Country Club Road main. No other customers complained that their water was discolored or muddy and the Weishners did not provide PAWC with any pictures or other documentation to support their claims. Therefore, I conclude that PAWC customer service did not violate Section 1501 of the Public Utility Code.

Water Buffalos

Mr. Weishner complained that PAWC discriminated against him because it did not supply him with a water buffalo but supplied water buffalos to his neighbors on Kirk Lane.

Mr. Ricuitti explained that PAWC provided the homes on Kirk Lane with water buffalos because those homes had no water service at all. The customers on Kirk Lane are not served by the same main as the customers on Country Club Road. Therefore, there was no reason to provide water buffaloes to customers on Country Club Road.

Mr. Weishner did not present any evidence to rebuts Mr. Ricuitti's testimony, other than his insistence that PAWC should have provided him with a water buffalo because the water in his home was muddy. Mr. Ricuitti's explanation is reasonable. PAWC did not discriminate against Mr. Weishner.

Conclusion

I conclude that the Weishners' complaint must be dismissed. The Weishners did not prove that the muddy water inside their home was caused by PAWC and not caused by some other condition in their plumbing. I also must find that the Weishners did not prove that PAWC's customer service response was inadequate or that

PAWC discriminated against the Weishners when PAWC did not provide the Weishners with a water buffalo.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties the subject matter in this proceeding. 66 Pa.C.S. § 701.
2. The party filing the complaint bears the burden of proving that they are entitled to relief from the Commission. 66 Pa.C.S. § 332(a).
3. The Weishners must show that PAWC is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (1950).
4. Public utilities are required to render reasonable and adequate customer service but are not required to render flawless or perfect service. 66 Pa.C.S. § 1501.
5. The Weishners have not met their burden of proving that PAWC failed to provide adequate water service or adequate customer service. 66 Pa.C.S. §§ 1501; 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Michael and Mary Weishner against Pennsylvania American Water Company at Docket C-2024-3046232, is dismissed.
2. That the Secretary's Bureau shall mark Docket No. C-2024-3046232 closed.

Date: February 5, 2025

/s/
Mary D. Long
Administrative Law Judge