**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held June 30, 2016 |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  John F. Coleman  Robert F. Powelson  David  W. Sweet |  |
| Aesha Lynch | F-2015-2468979 |
| 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 of Pennsylvania-American Water Company (PAWC or Company) filed on October 28, 2015, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale issued on October 8, 2015, in the above-captioned proceeding. The Initial Decision sustained, in part, and denied, in part, the Complaint. No Replies to Exceptions were filed by Aesha Lynch (Complainant or Ms. Lynch). For the reasons stated below, we shall grant the Exceptions, in part, and deny them, in part, and modify the ALJ’s Initial Decision consistent with the discussion herein.

**History of the Proceeding**

On February 18, 2015, the Complainant filed a Formal Complaint (Complaint) against PAWC.[[1]](#footnote-2) In her Complaint, the Complainant alleged that PAWC was threatening to terminate her service and that there were incorrect charges on her bills that reflect high water usage resulting from a service line leak incurred when the Company moved the meter from a crawl space in her home to a meter pit on her property. For relief, the Complainant requested that the Commission order PAWC to repair the leak and reduce the recorded consumption to a normal level. Complaint at 2-3, I.D. at 1.

On March 18, 2015, PAWC filed an Answer to the Complaint (Answer) in which it admitted that it moved the meter from the crawl space into the meter pit but denied it caused the water leak and various other averments made by the Complainant. In its Answer, PAWC asserted that the Company had informed the Complainant multiple times of the leak and had asked her to repair the leak. PAWC stated that it informed the Complainant that she is responsible for the repairs but she refused to repair the leak. PAWC averred that the Complainant’s service was terminated after proper notice because she failed to repair the leak but the service was later restored as a courtesy to the Complainant. Answer at 2-3.

PAWC also filed New Matter with a Notice to Plead with its Answer. In the New Matter, PAWC reiterated its position by highlighting the timeline of events/activities that led to the termination and restoration of the Complainant’s service. PAWC also emphasized that the Complainant violated the Company’s Commission-approved tariff by refusing to repair the service line. PAWC requested that the Commission dismiss the Complaint because the leak is on the Complainant’s service line and she is responsible for the repair and maintenance of the service line. Answer at 4-6.

On April 24, 2015, the Complainant submitted a late-filed Answer to PAWC’s New Matter in which she admitted and denied various averments made by the Company.[[2]](#footnote-3)

On May 21, 2015, a telephonic hearing was held in this matter. The Complainant appeared *pro* se and testified. The Complainant also presented the testimony of her husband, Mr. Scott Lynch (Mr. Lynch), and offered one exhibit (Complainant Exhibit 1) that was admitted into the record. PAWC appeared and was represented by its counsel, who presented the testimony of two witnesses, Mr. James Myers, PAWC’s Field Service Representative and Ms. Tawana Dean, PAWC’s Customer Service Manager. PAWC also offered fourteen exhibits (PAWC Exhibits 1 through 14) that were admitted into the record. The record in this case contains a 154-page transcript and fifteen exhibits. The record was closed on June 30, 2015. I.D. at 2.

In her Initial Decision, issued on October 8, 2015, the ALJ sustained the Complaint, in part, and denied it, in part. The ALJ also accessed a $5,000 civil penalty against PAWC for failing to notify the Complainant about the water line leak which the ALJ believed could have been mitigated had PAWC informed the Complainant about the leak when it was first discovered. I.D. at 14-15. As noted, *supra*, PAWC filed Exceptions on October 28, 2015. The Complainant did not file Replies to Exceptions.

**Background**

The Complainant averred that she has resided in the same single-family home in Tobyhanna, Pennsylvania (Service Address) with her husband for approximately fifteen years. Tr. at 16 and 41. The Complainant, who is the ratepayer of record, averred that PAWC became her water service provider in 2008 when it acquired Pocono Farms Water Company (PFWC) which was her previous water service provider. Tr. at 17-18. The Complainant stated that she never received any monthly water bills from PFWC prior to 2008 because she paid for water service through her homeowners’ association fees. Tr. at 17-19 and 39.

The Complainant averred that on or about July 17, 2014, she called PAWC to ask them why the Company kept estimating her water consumption rather than providing actual meter readings on her monthly bills ever since PAWC became her water service provider in 2008.[[3]](#footnote-4) Tr. at 18-19, 23, and 36-37. According to the Complainant, on the same day she called, PAWC informed her that on July 29, 2014, it would move her meter from its current location in the crawl space inside her home to the existing meter pit located on the Complainant’s property line. The Complainant indicated that three days after PAWC relocated the meter, she and her husband noticed water collecting in the trench located in her front yard and that runs parallel to the street.[[4]](#footnote-5) Tr. at 19, 31, 36-38 and 43.

According to the Complainant, during the fifteen years that she lived at the Service Address, and prior to July 29, 2014, when the meter was moved, she never experienced any leaks in her water line or observed the collection of water in her front yard. The Complainant indicated that subsequent to the meter relocation, she made several attempts to inform PAWC about the leak so that it could be fixed. However, she never received a response from PAWC until August 21, 2014, almost a month after the leak was noticed.[[5]](#footnote-6) Tr. at 19 and 30.

Additionally, the Complainant noted that she used to pay an average of $70 per month for water service prior to July 29, 2014. However, after the meter was relocated, she claimed her monthly water bill increased tremendously. The Complainant stated that pursuant to a Commission-issued payment arrangement in February 2015, she is currently paying $130 per month for water service. Tr. at 21-22. The Complainant, therefore, requested that the Commission order PAWC to fix the leak and reduce her monthly bill to a reasonable amount. Tr. at 148-152.

PAWC, on the other hand, contended that in 2010 it commenced a main replacement program in the Complainant’s neighborhood at which time it replaced the distribution system mains and installed new meter pits close to the distribution mains. PAWC averred that the main replacement program was aimed at identifying leaks and addressing the Company’s access to meters because most of its customers in the Complainant’s neighborhood are seasonal customers. Tr. at 62.

According to PAWC, the only work that its Field Service Representative did on July 29, 2014, was to move the Complainant’s meter from the crawl space inside her home to the existing meter pit that is located approximately fifty feet away from the front of the residence and within the right-of-way near the street. Tr. at 19, 30, 64, 69 and 99; (PAWC Exh. 1). PAWC denied that its Field Service Representative caused the leak stating that the Field Service Representative did not use any tool that could cause damage to the line when he moved the meter.[[6]](#footnote-7) PAWC averred that the location of the leak could have been anywhere in the service line but that that the only way to determine the exact location of the leak would be to excavate around it. Furthermore, PAWC contended that based on its Commission-approved tariff, the Complainant is responsible for the repair of the service line leak. PAWC averred that the only reason it discovered the leak was because the meter had been moved from the customer’s crawl space, where only the actual volume of water consumed by the Complainant was registered, to the meter pit, where the total volume of water consumed by the Complainant in addition to the amount of water lost through the leak was then being registered. PAWC claimed that its Field Service Representative informed the customer about the leak on July 29, 2014, when he relocated the meter to the meter pit and noticed that the meter was still registering water flow even though the valve on the water line inside the premises at the Service Address was turned off. In addition, PAWC contended that it informed the Complainant on several occasions about the leak and gave her multiple opportunities to fix the leak but she refused to do so.[[7]](#footnote-8) Tr. at 144-147.

**Discussion**

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 (Code), 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that PAWC is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by PAWC. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. *Mill v. Pa P.U.C.* 447 A.2d 1100 (Pa. Cmwlth. 1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, also referred to as the burden of persuasion, to rebut the evidence of the customer shifts to PAWC. If the evidence presented by PAWC is of co‑equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of PAWC. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d)

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

Further, pursuant to Section 1501 of Pennsylvania Statutes, 66 Pa. C.S. § 1501, “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. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service….” 66 Pa. C.S. § 1501.

In addition, 52 Pa. Code § 65.1 defines the utility company’s service line as the “connection between the distribution facilities or pipeline extensions of the utility which connects any main with the inlet connection of a service line of a customer at the curb or property line”, while the customer’s service line is the “service line extending from the curb, property line or utility connection to a point of consumption.” 52 Pa. Code § 65.1.

With regard to Customer Responsibility for Service Line, PAWC’s current tariff provides, in pertinent part, as follows:

4.9. CUSTOMER RESPONSIBILITY FOR SERVICE PIPE

4.9. The Customer shall have full responsibility for the installation, repair, replacement, and maintenance of all Service Pipes, including full responsibility for metered water usage attributable to a leak in the Service Pipe; provided that where an undetected, non-surfacing, underground leak is found in a Customer's Service Pipe, the Company shall credit the Customer with a one-time adjustment equal to forty percent (40%) of that portion of one month's consumption that exceeds the average monthly usage, based on the prior twelve month period, upon proper verification that the leak has been repaired.

Pennsylvania-American Water Company – Tariff Water - PA. P.U.C. No. 4, Original Page No. 20 (Effective July 27, 1994) (emphasis added).

**ALJ’s Initial Decision**

ALJ Dunderdale made thirty-one Findings of Fact and reached seven Conclusions of Law. I.D. at 2-6, 14-15. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her analysis, the ALJ discussed the credibility of the witnesses in the instant proceeding consistent with past precedent.[[8]](#footnote-9) The ALJ found that both the Complainant’s and Mr. Lynch’s testimony that was presented was clear, unequivocal and certain of the facts. The ALJ also found that the Customer Service Manager’s testimony that was based entirely on Company business records, is clear and concise. The ALJ observed that the Customer Service Manager did not exhibit any form of personal bias or *animus* towards the Complainant in her testimony. Nevertheless, the ALJ found that the Customer Service Manager had no personal knowledge of the events that transpired at the Service Address in July and August 2014. I.D. at 9.

On the other hand, the ALJ found that the Field Service Representative’s testimony was self-serving and not credible. I.D. at 9. Notably, the ALJ explained that the Field Service Representative testified that there was a leak in the crawl space after he moved the meter but that he repaired that leak immediately. However, the Field Service Representative failed to record in the Company’s business records his findings about the leak in the service line in the Complainant’s front yard and never advised his supervisors that the meter was recording water usage on July 29, 2014, when water inside the premises at the Service Address was shut off for the meter relocation project. The ALJ found that the Field Service Representative’s failure to record his findings about the leak was telling.  *Id.*

The ALJ also found that when the Field Service Representative first arrived on July 29, 2014 to relocate the meter, there was no water leak, no water in the meter pit, and no standing water in the front yard at the Service Address. However, after the Field Service Representative left the Service Address on July 29, 2014, the ALJ found that for the first time in fifteen years, water began collecting in the Complainant’s front yard and in the meter pit to the extent that it caused the radio transmitter on the meter to fail so that the meter readings had to be taken on-site by a follow-up PAWC field technician. I.D. at 10. Nevertheless, even though the ALJ stated that while it appears, based on record evidence, that PAWC may have caused the leak when it relocated the meter, an appearance of cause is not the same as causation. *Id.*

The ALJ imparted that while the Complainant carries the burden of proving that PAWC caused the leak, the Complainant was able to prove only that PAWC appears to have caused the leak. Thus, the ALJ concluded that the Complainant failed to meet her burden of proof. In support of this conclusion, the ALJ explained that the Complainant was not able to prove where the leak was located, did not present the section of broken pipe to show how PAWC may have damaged it, and did not present any testimony or evidence from a professional plumber or an engineer to confirm that PAWC’s actions on July 29, 2014, caused the leak and the subsequent massive loss of water at the Service Address. Although the ALJ found the Complainant’s evidence was credible, she also found that it was not sufficient in weight and content to overcome the contrary evidence from PAWC. For these reasons, the ALJ denied the Complainant’s request that PAWC be directed to repair the leak. *Id. See* *Hannah v. Columbia Gas*, Docket No. C-2011-2227083 (I.D. November 7, 2014) (Final Order January 15, 2105).

Notwithstanding her denial of the Complainant’s request to require PAWC to repair the leak, the ALJ also sustained the Complaint, in part, because she found that PAWC failed to provide reasonable and adequate service to the Complainant. In this regard, the ALJ explained that the record evidence indicates that the Field Service Representative knew there was a leak at the Service Address on July 29, 2014, but failed to inform the Complainant until August 21, 2014, after 37,500 gallons of water were lost through the leak.[[9]](#footnote-10) In light of the fact that PAWC failed to notify the Complainant about the leak for almost a month after it was discovered, the ALJ found that the Field Service Representative’s testimony was not credible enough to rebut the evidence presented by the Complainant. Consequently, the ALJ ruled that the Complainant carried her burden of proof and showed that PAWC failed to provide reasonable service when its Field Service Representative failed to notify the Complainant about the water leak after he relocated the Complainant’s meter. *Id.* at 10-11.

The ALJ explained that PAWC’s failure to notify the Complainant about the leak and its refusal to visit the Service Address when the Complainant called about the leak, caused the Complainant to pay for 37,500 gallons of water that flowed through the meter from when the leak started until August 21, 2014. In recognition of the aforementioned findings, the ALJ opined that while it is outside the Commission’s jurisdiction to award monetary damages, the Commission has the authority to issue a civil penalty and/or to require a utility to refund monies that were incorrectly billed to a ratepayer. [[10]](#footnote-11) For these reasons, the ALJ directed PAWC to refund and credit the Complainant’s account in the amount of $408.50[[11]](#footnote-12) for the billed water loss from July 29 through August 21, 2014, within thirty days from the date of the Commission’s final order in this proceeding. *Id.* at 11, citing PAWC Exh. 13.

The ALJ also noted that consistent with Sections 3301(a) and (b) of the Code, 66 Pa. C.S. § 3301(a) and (b), the Commission can impose a maximum civil penalty of $1,000 per day for violations of its Statutes, Regulations and Orders. The ALJ ruled that PAWC’s failure to notify the Complainant about the water line leak which ultimately deprived the Complainant the opportunity to mitigate the water loss, was a serious violation that warrants a penalty against the Company. Consistent with the standards set forth in Section 69.1201(c) of the Commission’s Regulations for determining the level of the penalty that should be imposed, the ALJ concluded that the evidence in this case proved that a civil penalty of $5,000 against PAWC was reasonable to prevent similar future violations from occurring. The ALJ, therefore, assessed a $5,000 civil penalty against PAWC. *Id.* at 12-14 and 16.

**Exceptions and Replies**

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

In its introduction to its Exceptions, PAWC asserts that the ALJ’s conclusion that the Company failed to provide reasonable and adequate customer service is not supported by the evidence on record and should be rejected by the Commission. Further, PAWC asserts that even if the Commission determines that the Company failed to provide reasonable and adequate service to the customer, when viewed in its entirety, the evidence on record does not justify a billing adjustment or the imposition of a civil penalty. Exc. at 1.

PAWC avers that the service line leak was discovered for the first time on July 29, 2014, when the Complainant’s meter was moved from inside her home to a meter pit located in PAWC’s right-of-way outside the home. PAWC argues that the only reason the leak was identified was because the meter was moved and is now registering the flow through the service line. PAWC explains its position using the following diagram:[[12]](#footnote-13)

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***Before July 29, 2014***

**Water Flow**

**🡸**

**Meter**

**Area of Leak**

**Lynch Residence** **Meter Pit** Street

(**M = *Meter inside the home)***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***After July 29, 2014***

**Water Flow**

**🡸**

**Area of Leak**

**Lynch Residence** **Meter Pit** Street

***(M= Meter inside the Meter Pit)***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exc. at 4-7.

PAWC claims that it informed Mr. Lynch personally about the leak on July 29, 2014, and that it subsequently verified the existence of the leak on three separate occasions – August 21, 2014, October 27, 2014, and January 12, 2015. PAWC also avers that it informed the Complainant via telephone on four separate occasions – on August 20, 2014, September 23, 2014, September 29, 2014, and October 2, 2014 – that she is responsible for the repair of the leak. Further, PAWC notes that it provided a written notice to the Complainant about the leak on three separate occasions – November 5, 2014, December 4, 2014, and December 10, 2014. Exc. at 7. PAWC states that despite these multiple notices and after four months of inaction on the part of the Complainant to repair the leak, it terminated service to the Complainant on December 22, 2014. *Id.*

Additionally, PAWC asserts that it did everything possible to work with the Complainant to address the issue by restoring service to the Complainant on December 31, 2014, as a courtesy, after the Complainant promised to repair the leak. Yet, according to PAWC, to date, the Complainant has refused to repair the leak and her meter is now registering over 100,000 gallons of water per month because of the leak. According to PAWC, the current outstanding balance on the Complainant’s account is in excess of $7,400. *Id.* at 7-8, citing PAWC Exh. 13.

**PAWC’s Exception No. 1**

In its first Exception, PAWC disputes the ALJ’s conclusion that the service line leak *started* on July 29, 2014. Exc. at 9, citing I.D. at 11. PAWC contends that the ALJ erred in her finding that the Complainant’s service line leak *started* on July 29, 2014. PAWC quotes the ALJ stating “...the Complainant was forced to pay for 37,500 gallons of water which flowed through the meter ***from the time the leak started*** until August 21, 2014.” (Emphasis added). Exc. at 9-10, citing I.D. at 10.

PAWC posits that the ALJ’s assertion that the leak was created when the Field Service Representative moved the old meter from the crawl space inside the Complainant’s home to the meter pit on July 29, 2014, is inaccurate. Exc. at 9, citing I.D. at 10. PAWC contends that the fact that the ALJ ultimately concluded that the Complainant did not meet her burden of proving that PAWC did, in fact, cause the leak, makes the ALJ’s conclusion questionable. Exc. at 9-10. Specifically, PAWC asserts that the ALJ’s incorrect conclusion and her recommendation that PAWC adjust the Complainant’s bill portends that PAWC forced the Complainant to pay for 37,500 gallons of water that flowed through the meter from the time the leak *started* until August 21, 2014. Id. at 10, citing Tr. at 74, PAWC Exh. 1, 2, and 13. PAWC states that to the extent that the ALJ found that the leak started on July 29, 2014, such a finding is not supported by the record evidence. Exc. at 10.

PAWC further avers that there is no way to know exactly when the leak started, especially since the only reason the leak was identified was because it started registering on the meter after the meter was moved to the meter pit on July 29, 2014. PAWC submits that while July 29, 2014, marks the day the leak was first discovered and registered on the meter, it does not mean the leak started on that day. Exc. at 10, citing Tr. at 67-69. PAWC contends that the water leak never registered on the meter when the meter was in the crawl space inside the premises because the water was exiting through the leak in the service line before it ever reached the meter. However, after the meter was relocated to the meter pit, which was located on the other side of the leak in the service line, the actual amount of water leaking from the service line now started to register through the meter. PAWC argues that it is possible that the leak may have been going on for years and the fact that it did not surface on the Complainants property prior to the meter relocation does not necessarily mean it was not there. *Id.* at 10-11, citing Tr. at 67‑69.

Additionally, PAWC contends that the meter relocation project was a simple job that just required a “pair of Channellock pliers” without any form of excavation that could have caused the leak in the service line. PAWC also surmises that there could be multiple leaks on the service line, but that the only way to know for sure is to excavate around the service line between the meter and the premises at the service address. For the foregoing reasons, PAWC submits that the only fact established by the record evidence is that the leak was discovered on July 29, 2014, but that there is no evidence to support the ALJ’s finding that the leak started on July 29, 2014. Therefore, PAWC requests that the Commission reject the ALJ’s conclusion that the leak started on July 29, 2014.

**Disposition**

Upon consideration of the record evidence in this proceeding, we will grant PAWC’s Exception No. 1 concerning the ALJ’s conclusion that the service line leak *started* on July 29, 2014, to the extent that she based any findings that the leak started on that date. Accordingly, consistent with the discussion below, we will make this modification and also modify the ALJ’s finding in her Initial Decision that the “Complainant was forced to pay for 37,500 gallons of water which flowed through the meter from the time the leak started until August 21, 2014.” I.D. at 10.

We agree with PAWC’s contention that just because the leak was discovered on July 29, 2014, after the Field Service Representative relocated the meter, does not necessarily mean the leak started on that day. Our review of the record leads us to believe that there is insufficient evidence to support a conjecture that the leak actually *started* on July 29, 2014. We agree with PAWC’s argument that the only reason the leak was identified or otherwise discovered was because prior to the relocation, the meter just measured the amount of water used by the Complainant; but after the relocation of the meter from the crawl space in the Complainant’s home to the meter pit, the new location of the meter allowed it to register *all* of the water flowing through the service line, including the amount of water being used by the Complainant as well the amount of the water being lost through the leak in the service line. As such, we agree with the Company that the record evidence supports a finding that the leak in the Complainant’s service line was *discovered* on July 29, 2014, but may not have necessarily *started* on that date. For this reason, we shall grant PAWC’s Exception No. 1, in part, and modify the ALJ’s Initial Decision accordingly.

Consistent with this modification, we shall modify the ALJ’s finding in her Initial Decision on page 11 of her Initial Decision so that it reads as follows:

As a result of the omission by PAWC and because PAWC did not visit the service address when Complainant called about the water in the ditch, Complainant was forced to pay for 37,500 gallons of water which flowed through the new meter from when the newly installed meter began to register the water flow ~~the time the leak started~~ until August 21, 2014.

**PAWC’s Exception No. 2**

In its second Exception, PAWC contends that the ALJ incorrectly concluded that the Company provided unreasonable and inadequate service to the Complainant. Exc. at 13, citing I.D. at 10-11. PAWC objects to the ALJ’s ruling that subjects the Company to a civil penalty based on her conclusion that PAWC lacked credibility and failed to notify the Complainant about the leak for almost a month after it became aware of the leak. Exc. at 13, citing I.D. at 11. PAWC asserts that the ALJ’s conclusion is not supported by substantial evidence. But even if it were, PAWC opines that it does not support the imposition of a civil penalty against it.

With regard to the ALJ’s assertion that the Field Service Representative’s testimony lacked credibility, PAWC avers that the Field Service Representative repeatedly and consistently stated in his testimony that he orally informed Mr. Lynch about the service line leak on July 29, 2014, the day he relocated the meter. Exc. at 13‑15, citing Tr. at 66-71 and 93-95; PAWC Exh. 1. PAWC maintains that there is no reason to doubt the veracity of the Field Service Representative’s testimony as he was very detailed and consistent and that he reiterated on multiple occasions during his testimony that he did inform Mr. Lynch about the leak and that he even advised him to call a plumber. Tr. at 93-95; Tr. at 104, line 4; Tr. at 106, line 6 and 23. Notwithstanding the Field Service Representative’s insistence that he informed Mr. Lynch about the leak, PAWC points out that neither the Complainant nor Mr. Lynch presented any evidence or testimony to rebut the Field Service Representative’s repeated assertions. PAWC, therefore, argues that that there is no reason or sufficient record evidence to reach a conclusion that PAWC failed to notify the Lynches about the leak when the meter was relocated from the crawl space to the meter pit on July 29, 2014. Exc. at 15, citing Tr. at 104 and 106.

PAWC further asserts that, consistent with Section 1501 of the Code, 66 Pa. C.S. § 1501, its efforts to inform the Complainant about the existence of the leak are reasonable and adequate when viewed in its entirety. PAWC emphasizes that pursuant to its tariff and the Commission’s previous rulings, the Complainant is responsible for the repair, replacement, and maintenance of the service line.[[13]](#footnote-14) Exc. at 16, citing PAWC – Tariff Water - PA. P.U.C. No. 4, Rule 4.9. PAWC avers that while its tariff and Commission Regulations are silent with regard to the Company’s obligation to notify a customer when it is determined that there is a service line leak, it still must comply with Section 1501’s requirement that obligates the Company to provide reasonable and adequate service. Exc. at 16.

In support of its compliance with Section 1501, PAWC first argues that the record in this case demonstrates that its actions in handling the service line leak were reasonable and adequate. PAWC argues that even if the Field Service Representative’s July 29, 2014 verbal communication is ignored, the undisputed evidence shows that the Company notified Ms. Lynch about the leak on August 21, 2014, or twenty-three days after the leak was first discovered, and shortly after the issuance of the first bill following the move of the meter.[[14]](#footnote-15) The Company is of the opinion that notifying a customer about a leak twenty-three days upon its discovery should not be considered unreasonable service. Exc. at 16-17.

PAWC also argues that its subsequent actions in responding to the existence of the service line leak also were clearly reasonable and adequate. In this regard, PAWC submits:

. . . the Company notified Ms. Lynch of the existence of the leak and her obligation to repair it multiple times in writing and via telephone between August 21, 2014 and December 10, 2014. The Company also notified her that an adjustment to her account would be issued after the leak was repaired. Only after Ms. Lynch failed to take any actions to repair the leak did the Company terminate her service. But the Company then quickly restored her service as an act of good will even before the leak was repaired, when Ms. Lynch indicated that she would hire a plumber to repair the leak.

Exc. at 17. PAWC emphasizes that notifying the Complainant earlier about the leak would not have made any difference in this case as the Complainant failed to repair the leak despite being offered multiple opportunities to do so. PAWC asserts that had the Complainant repaired the leak when she first was notified about the leak, the Company would have provided her with a credit adjustment and this matter would have been resolved sooner.

For all of the reasons stated above, PAWC contends that the record clearly indicates that the Company’s handling of the Complainant’s service line leak was reasonable and adequate. Exc. at 17‑18.

**Disposition**

Upon consideration of the record evidence in this proceeding, we will deny PAWC’s Exception No. 2, consistent with the discussion in this Opinion and Order *infra*. We agree with the ALJ’s conclusion that PAWC failed to provide reasonable and adequate service to the Complainant when it failed to inform the Complainant about the leak until August 21, 2014, almost a month after the leak was identified by its field technician. I.D. at 10-11. Although, PAWC argues that the Field Service Representative testified several times that he informed Mr. Lynch about the leak on July 29, 2014, we agree with the ALJ’s finding that the Field Service Representative’s testimony lacked credibility.

In his testimony, the Field Service Representative averred that he noticed some movement on the Complainant’s meter on July 29, 2014, and that the movement got progressively worse in his subsequent visits to the Service Address. Tr. at 139. Further, the Field Service Representative, on several occasions during his testimony, appeared not to be sure of what he did on most of his visits to the Service Address. Tr. at 87-89. More specifically, the fact that the Field Service Representative failed to notify his supervisor about the leak and record the leak in the Company’s records on July 29, 2014, presumes that he did not inform Mr. Lynch about the leak on the day he moved the meter from the crawl space to the meter pit. Tr. at 94; PAWC Exh. 1. In this regard, we note that the Field Service Representative testified that he noticed some movement on the meter after he relocated the meter on July 29, 2014. In an attempt to stop the movement, he then tightened the pipe connections from where the meter was removed in the crawl space and turned the water back on and went back out to the meter pit; but there was still movement on the meter. The Field Service Representative testified that he then told Mr. Lynch to check to determine if there was anyone using water inside the house. After confirming that no one was using water inside the house, the Field Service Representative still noticed movement on meter. As a result, he claimed that after observing the movement on the meter he told Mr. Lynch to call a plumber because he did not want to shut off the water at the Service Address. Tr. at 66-67 and 91-93. Despite all of the activities the Field Service Representative claimed occurred on the day he relocated the meter, he never included any of these details in the Company’s records. Tr. at 94; PAWC Exh. 1. On the other hand, the Complainant disputed the Field Service Representative’s claim that he informed her husband about the leak. Tr. at 106.

Based on the forgoing, we are unable to determine whether or not the Field Service Representative actually notified the Complainant’s husband about the leak because it is the Complainant’s word against the Field Service Representative’s word in this proceeding. Nevertheless, we agree with the ALJ’s conclusion that Field Service Representative lacked credibility in light of the fact that he failed to notify his supervisor or document in the Company records any of the activities about the leak he discovered on July 29, 2014, when he relocated the meter. In this regard, we agree with the ALJ’s assessment of this situation in her Initial Decision when she stated, “I find that omission to be telling. Mr. Myers admitted there was a small leak in the crawlspace after he moved the meter, which he repaired quickly. However, he failed to advise the company or his supervisors that the meter was recording water usage on July 29, 2014 when the water was shut off.” I.D. at 9. For these reasons, we shall deny the Company’s second Exception.

**PAWC’s Exception No. 3**

In its third Exception, PAWC disputes the ALJ’s ruling that requires the Company to adjust the Complainant’s bill by crediting the Complainant “the sum of $408.50 which represents the amount billed in August 2014 for the water lost when PAWC failed to notify Complainant about the water leak or respond timely when Complainant called to complain of standing water.” Exc. at 18, citing I.D. at 10-11.

First, PAWC argues there is nothing on the record to support a suggestion that PAWC’s response was untimely. PAWC submits that its Customer Service Manager testified that prior to August 20, 2014, it had no record showing that the Complainant contacted the Company to complain about the leak. However, after it received a request from the Complainant about the leak on August 20, 2014, PAWC claims it sent a field service technician to the Service Address the very next day on August 21, 2014, to verify the existence of the leak. Exc. at 18, citing Tr. at 111-112 and 131; PAWC Exh. 2. Contrary to the ALJ’s determination, PAWC is of the opinion that its service response in reply to the Complainant’s call about standing water in her front yard was conducted in a timely and adequate manner. Exc. at 19.

PAWC further excepts to the ALJ’s directive that it provide a billing adjustment to the Complainant for the leaked water because it is contrary to its Commission-approved Tariff. According to the Company, Tariff Rule 4.9 provides that when a leak is found on a customer’s service line, the Company is required to provide a one-time credit adjustment equal to 40% of that portion of one-month’s consumption that exceeds the average monthly usage based on the prior twelve month period, upon proper verification that the leak has been repaired. *Id.* at 19, citing PAWC Exh. 14. PAWC avers that it informed the Complainant on numerous occasions it would provide an adjustment to the Complainant’s bill as soon as it verified that the line had been repaired by the Complainant. PAWC also claims that it told the Complainant that it would do more than what is required in its tariff regarding her bill as soon as it can verify that the Complainant repaired the service line. Exc. at 19, citing Tr. at 113 and 123; PAWC’s Answer to New Matter at ¶ 28. For these reasons, PAWC contends that the ALJ’s ruling that requires the Company to credit the Complainant for all the charges incurred between July 29, 2014, and August 21, 2014, without requiring the Complainant to repair the service line, contradicts the provisions of its Commission-approved tariff and should be rejected. Exc. at 19.

**Disposition**

Upon consideration of the record evidence in this proceeding, we shall grant PAWC’s Exception No. 3, in part, and deny it, in part. We agree with PAWC that although the Complainant claims she called PAWC on several occasions about the leak after July 29, 2014, there is nothing in the record that supports the Complainant’s assertions. PAWC testified that prior to the meter relocation project, the Complainant called the Company on April 3, 2014, and April 11, 2014, to discuss issues related to payments on her account. Tr. at 125. PAWC averred that it does not have any record that indicates that the Complainant called the Company at any time in in July 2014. Tr. at 111. Further, PAWC averred that subsequent to the meter relocation on July 29, 2014, the Complainant never called until August 20, 2014, at which time she called to inquire about her then most recent bill that reflected her usage was unreasonably high.[[15]](#footnote-16) Tr. at 112; PAWC Exh. 13.

Hence, we note that despite the Complainant’s claim that she called the Company on several occasions to report the leak prior to when PAWC sent a field technician to the Service Address on August 21, 2014, the Complainant did not provide any evidence to support her claims. The Complainant could have provided phone logs or phone records to support her claims but failed to do so. As such, we are convinced by PAWC’s argument that the Complainant called the Company only after she received her water bill that reflected an unreasonably high usage subsequent to the meter relocation. We are of the opinion that PAWC did respond in a timely fashion when it responded the day after the Complainant contacted the Company that there was water accumulating in her front yard. Tr. at 112; PAWC Exh. 2. Therefore, we grant PAWC’s Exception on this matter to the extent that the ALJ considered PAWC’s August 21, 2016 response untimely.

However, we are of the opinion that the Company acted in an untimely manner when its Field Service Representative failed to inform the Complainant about the leak when he discovered it on July 29, 2014. We have reached this determination because we are of the opinion that it is imperative that the discovery by Company personnel of an event as significant as a water service leak at a customer’s premises should at least be noted in the Company’s records along with a notation of the date when the customer was notified. In this regard, we take administrative notice of Section 15.3 of the Company’s tariff that requires customers, at their own expense, to repair or replace leaking pipes “within ten days after receiving notice from the Company that the pipe is leaking or can no longer be used.” In our opinion, PAWC was unable to effectively enforce Section 15.3 of its tariff because its Field Service Representative failed to *formally* inform the Complainant about the leak when he discovered the leak on July 29, 2014. For ease of reference, we quote Section 15.3 of PAWC’s Tariff below:

15.3 Responsibility for Repair and Replacement of Private Water Service Pipe

The maintenance, repair or replacement of a private water service pipe is the responsibility of the Customer served by the pipe. The Company reserves the right to require the Customer served by a private water service pipe to repair or replace the pipe, or enter into a main extension deposit agreement, at the Customer’s option, if the pipe is leaking, can no longer be used for whatever reason, or is otherwise endangering the public’s safety. The Customer must perform such repair or replacement, at the Customer's own expense. **The Customer must perform such repair** or enter into said main extension deposit agreement immediately after receiving notice from the Company that the private water service pipe is endangering the public safety or **within ten days after receiving notice from the Company that the pipe is leaking or can no longer be used.** The Company reserves the right to terminate water service to the Customer after legal notice if such required action is not taken within the time indicated above. (Emphasis added).

If PAWC had properly documented the discovery of the leak and the date on which it informed the Complainant, this matter could have been resolved within ten days consistent with Section 15.3 of the Company’s Tariff. However, since PAWC’s Field Service Representative failed to do both upon discovering the leak, we are of the opinion that the ALJ did not err in her finding that PAWC failed to properly inform the Complainant about the discovery of the leak in a timely fashion. The fact that the Company’s testimony revealed that the Field Service Representative discovered the leak on July 29, 2014, and verbally informed the Complainant’s husband about the leak, but never bothered to document the date it was discovered and conveyed to the Complainant, in our view, constitutes an untimely notification to the Complainant because no documentation exists that would otherwise enable the Company to enforce Section 15.3 of its tariff, such as is the case here. Therefore, we deny the Company’s third Exception to the extent that the ALJ considered PAWC’s notification to the Complainant about the leak that was discovered on July 29, 2014, as untimely.

In light of the above, we will uphold the ALJ’s ruling that PAWC “credit the Complainant the sum of $408.50, which represents the amount billed in August 2014 for the water lost when PAWC failed to notify the Complainant about the leak.[[16]](#footnote-17) As discussed above, it is evident from the record that the Field Service Representative knew about the leak on July 29, 2014, but failed to properly inform the Complainant on that date. Had the Field Service Representative’s complied with Section 15.3 of PAWC’s Tariff, and notified the Complainant about the leak on July 29, 2014, the loss of 37,500 gallons of water that PAWC billed the Complainant could have been avoided. For this reason, we are of the opinion that the Company and not the Complainant should be responsible for the lost water.

**PAWC’s Exception No. 4**

In its fourth and final Exception, PAWC contends that the ALJ’s assessment of a civil penalty against the Company is unwarranted given the facts and circumstances of this case. Exc. at 20, citing I.D. at 11-13. As earlier stated, after applying the ten factors pursuant to 52 Pa. Code § 69.1201(c), the ALJ assessed a $5,000 civil penalty against the Company based on her finding that PAWC’s actions constituted a violation of the Code. PAWC takes exception to the following: (1) the ALJ’s conclusion that the Company violated the Code by providing inadequate or unreasonable service; (2) the $5,000 civil penalty recommended by the ALJ for that violation; and (3) most of the ALJ’s analysis and findings regarding the ten factors in 52 Pa. Code § 69.1201(c) in support of the civil penalty. Exc. at 20.

With regard to the first factor pursuant to 52 Pa. Code § 69.1201(c)(1), as to whether the violation is of a serious nature, the ALJ found that PAWC’s failure to notify the Complainant *immediately* about the leak after it was discovered constitutes a violation. PAWC disagrees with this conclusion and asserts that for the sake of argument, even if it failed to notify the Complainant immediately about the leak, which it claims it did not, the lack of immediate notice did not implicate a safety concern, a possible injury, or property damage. Further, PAWC contends that it provided subsequent notices to the Complainant regarding the leak. As such, PAWC considers its actions less egregious and more of an administrative or technical error than they are a serious violation. *Id.*

With regard to the second factor concerning whether the resulting consequences of the conduct are of a serious nature pursuant to 52 Pa. Code § 69.1201(c)(2), the ALJ concluded that the consequence of PAWC’s actions were serious because the violation “cost the Complainant a significant sum of money.” I.D. at 12. PAWC disputes this finding by claiming that not only was there no property damage or personal injury, but the Complainant did not yet pay her water bill for the period in question. Furthermore, PAWC avers that it consistently maintained that it would provide the Complainant with a billing adjustment after the leak was repaired. Exc. at 20-21, citing Tr. at 113 and 123; PAWC Exh. 13.

With regard to the third factor, which examines whether the conduct at issue was intentional or due to negligence, 52 Pa. Code § 69.1201(c)(3), the ALJ found PAWC acted intentionally to withhold information about the service line leak from the Complainant. PAWC disagrees with the ALJ stating there is nothing in the record that supports the ALJ’s conclusion. PAWC asserts that the ALJ’s conclusion stems, in part, from the fact that the Field Service Representative did not document the leak in his notes. However, PAWC contends that contrary to the ALJ’s position, the Field Service Representative repeatedly maintained that he informed Mr. Lynch about the leak on the day he relocated the meter. PAWC also argues that while the Field Service Representative testified that he could not remember why he failed to record the leak in his notes, there is no factual basis to conclude that he acted intentionally. Exc. at 21.

With regard to the fourth factor regarding whether PAWC made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future, 52 Pa. Code § 69.1201(c)(4), PAWC disagrees with the ALJ’s finding that a higher penalty is justified because it failed to provide remedial training or instruction concerning notifications to customers of service line leaks. PAWC avers that the ALJ’s conclusion which is based on the fact that the Field Service Representative failed to notify the Complainant about the service line leak, is not supported by the record.

PAWC agrees with the ALJ’s analysis on the fifth and sixth factors, 52 Pa. Code §§ 69.1201(c)(5) and (6) concerning the number of customers affected and the Company’s compliance history, respectively. PAWC is of the opinion that the ALJ correctly noted that only one customer was affected and there is no record of poor compliance history on the part of PAWC. *Id.*

PAWC also agrees with the ALJ finding concerning the seventh factor, 52 Pa. Code §§ 69.1201(c)(7), which pertains to whether the Company cooperated with the Commission’s investigation, because it is not applicable to this case because there was no investigation by the Commission.

With regard to the eighth factor involving the amount of a civil penalty necessary to deter future violations, 52 Pa. Code § 69.1201(c)(8), PAWC disagrees with the ALJ’s conclusion that that a higher penalty is justified. In support of its position, PAWC claims that the actual record contradicts the ALJ’s conclusion that the Company failed to recognize lost water from July 29, 2014, to August 21, 2014, “despite numerous calls for assistance from the Complainant.” PAWC contends that its Customer Service Manager testified that PAWC’s records indicate that the Complainant made only one call to the Company after July 29, 2014, and that call was made on August 20, 2014. Exc. at  22, citing Tr. at 111 and 125-126. In addition, PAWC disagrees with the ALJ’s comparison of this case to *Rome Property Management*[[17]](#footnote-18) in support of her assessment of a civil penalty against the Company. I.D. at 13. PAWC asserts that there is no similarity between this case and *Rome* because the latter involved the imposition of a civil penalty that was based on the failure by PAWC to maintain a curb box in good working condition and PAWC’s subsequent delay in repairing the curb box after it discovered it was not functioning. In contrast, PAWC contends that the current case does not relate to any problems associated with the Company’s equipment. Rather, it involves a leak in a service line that is owned by the Customer and for which PAWC has no control or responsibility to maintain or repair. PAWC, therefore, avers that a civil penalty in this case will not have the deterrent effect that was at issue in *Rome*. Exc. at 22.

With regard to the ninth factor pursuant to 52 Pa. Code § 69.1201(c)(9), PAWC agrees with the ALJ’s disposition that no party cited to any past precedent addressing a utility’s responsibility to notify customers about service line leaks. PAWC asserts that to impose a civil penalty in this case when no clear regulation or rule has been violated would be improper and unjust.

Lastly, with respect to the tenth criterion regarding other relevant factors, 52 Pa. Code § 69.1201(c)(9), the ALJ found none were suggested or considered other than those factors previously discussed. I.D. at 14.

PAWC concludes its argument in this Exception by averring that the imposition of a penalty against PAWC in the current case is improper and unjust. PAWC submits, for the sake of argument, that assuming the Complainant was notified about the leak on August 21, 2014, instead of July 29, 2014, the ALJ’s rationale that the Complainant was denied the opportunity to mitigate the water loss due to PAWC’s failure to notify the Complainant about the leak in a timely fashion, [[18]](#footnote-19) ignores the fact that, to date, the Complainant has failed to take any steps to mitigate the water loss despite being notified multiples times (four times by telephone and three times in writing) about the leak. PAWC reiterates its argument that nothing in the record suggests that the Complainant’s actions would have been any different had she been notified earlier. For these reasons, PAWC contends that it should not be penalized for denying the Complainant the ability to mitigate the water loss for a period of twenty-three days when the Complainant has been unable to mitigate the water loss eight months after receiving multiple notices requesting her to repair the service line leak. *Id.* at 22-23.

**Disposition**

Upon consideration of the evidence on record, we will grant in part, and deny, in part, PAWC’s Exception No. 4. We note that we have already established that the Commission’s policy statement at 52 Pa. Code § 69.1201, wherein ten factors were adopted, will be utilized in determining the amount of civil penalty involved in PAWC’s violation in this case. Hence, with regard to the concerns raised in PAWC’s Exception No. 4 concerning the applicable factors, we will consider each of the factors in turn. Exc. at 20-23.

The first factor we consider is whether the conduct at issue is of a serious nature. 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*. In this instance, we agree with the ALJ’s finding that PAWC’s failure to notify the Complainant about the leak almost a month after it was discovered violates PAWC’s duty to provide adequate and reasonable service under Section 1501 of the Code. In this regard, we note that although PAWC’s Field Service Representative testified that he informed the Complainant’s husband about the leak when he discovered it on July 29, 2015, the Complainant presented the testimony of her husband who disputed the Field Service Representative’s claims. Notwithstanding the conflict in testimonies, we are of the opinion that had the Field Service Representative properly logged the discovery and the date of the leak in the Company’s records, this matter could have been resolved within ten days consistent with Section 15.3 of the Company’s Tariff. However, because the record is not sufficient to actually determine whether the Field Service Representative did or did not verbally inform the Complainant’s husband about the leak on the day of its discovery, and the fact that as discussed in the second factor, below, the service line leak did not implicate a safety concern, possible injury or serious property damage, we agree with the Company that the violation is closer to an administrative or technical error than it is to a serious violation.

The second factor we may consider is whether the resulting consequences of the conduct are 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.* Although the ALJ found that no testimony was presented with regard to any resulting property damage, she concluded that the Company’s conduct was of a serious nature that warrants a higher penalty because the consequence of the Company’s conduct cost the Complainant a “significant sum of money.”

PAWC disputes the ALJ’s conclusion because it claims the Complainant did not yet pay for her water bill for the period in question and that it testified that it would provide the Complainant with a billing adjustment after the leak was repaired. While we agree with the ALJ that the service line leak did not implicate a safety concern, possible injury or serious property damage, we are of the opinion that the ALJ’s conclusion that the Company’s conduct would cost the Complainant a “significant sum of money” is speculative. Although we can estimate that the total cost of the leaked water involved will be significant,[[19]](#footnote-20) *i.e.* the amount that actually will be paid for by the Complainant and the remaining amount that eventually will be paid for by the general body of ratepayers, we cannot concur with the ALJ’s conclusion that the Complainant will have to pay a “significant sum of money” because it is unknown at this time the amount that the Company will require the Complainant to pay.

We also disagree with the ALJ because the record shows that the Complainant herself shares a significant responsibility for the accumulation of the overall cost of the lost water. In this regard, we note that the record shows that the Company informed the Complainant via telephone on four separate occasions (August 20, 2014, September 23, 2014, September 29, 2014, and October 2, 2014) and by written notice on three separate occasions (November 5, 2014, December 4, 2014, and December 10,2014) that she was responsible for repairing the leak. However, the Complainant did not have the leak repaired as of the close of the record. We also note that the Company operated in good faith and gave the Complainant the benefit of the doubt when it restored her water service on December 22, 2014, after the Complainant indicated that that she would hire a plumber to repair the leak but never did. Thus, we disagree with the ALJ’s conclusion that the Company’s conduct was of a serious nature because the Complainant was largely responsible for the accruing loss of water by refusing to have the leak repaired.

The third factor is used in litigated actions such as this and examines whether the conduct at issue is deemed to be negligent or intentional. Intentional conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(3). The ALJ found that the Field Service Representative’s failure to inform the Complainant about the leak and record his observations in the Company’s records on the day it was discovered on July 29, 2014, was intentional. We disagree. The record shows that in response to the ALJ’s question to the Field Service Representative, a nine-year employee with the Company, as to whether he could recall why he did not log the discovery of the leak in his service order, he replied, “No. To be honest, I can’t.” In light of his response and based on the Company’s past history, it does not appear that the Field Service Representative’s conduct was intentional. As we discussed in factor No. 1, above, the Field Service Representative’s failure to record the information in his service log appears to be more of an administrative or technical error than a serious violation and, thus would warrant a lower penalty.

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. We agree with the ALJ that this factor warrants a higher penalty since PAWC presented no evidence to show that it recognized the error by the Field Service representative or provided remedial training or instruction and no evidence was presented that PAWC recognized that it failed to provide timely notification about the leak when it was discovered on July 29, 2014. I.D. at 13.

As noted *supra*, the fifth and sixth factors concern the number of customers affected and the Company’s compliance history, respectively. 52 Pa. Code §§ 69.1201 (c)(5) and (6). We agree with the ALJ that these factors do not justify a higher penalty since only one customer was affected and there is no record of poor compliance history on the part of PAWC. *Id.*

With regard to the seventh factor, 52 Pa. Code §§ 69.1201(c)(7), which pertains to whether the Company cooperated with the Commission’s investigation, we agree with the ALJ that this factor is not applicable to this case because there was no investigation by the Commission with regard to this matter. Thus, this criterion works neither to mitigate nor to aggravate the penalty to be imposed. *Id.*

The eighth factor involves consideration of whether the penalty amount would be sufficient to help deter future violations taking into consideration the size of the utility. 52 Pa. Code § 69.1201(c)(8). As noted, the ALJ assessed a $5,000 civil penalty against PAWC to deter future violations. The ALJ’s assessment of the $5,000 civil penalty stems, in part, from her conclusion that PAWC violated the Code when its Field Service Representative failed to notify the Complainant about the leak when it was discovered and also failed to respond in a timely manner despite numerous calls by the Complainant about the leak between July 29, 2014, to August 21, 2014, which ultimately resulted in the loss of 37,500 gallons of water.[[20]](#footnote-21) While we agree with the ALJ’s finding that PAWC failed to promptly inform the Complainant when the Field Service Representative first identified the leak, our review of the record indicates that it does not support the Complainant’s claim that she called multiple times to report the leak prior to August 20, 2014, when she called to complain about a high bill.

Based upon the foregoing discussion, we will reduce the penalty assessed against PAWC from $5,000 to $2,000. The $2,000 penalty is based on our review of the *undisputed* evidence in the record that PAWC delayed in relaying and recording its formal notification to the Complainant by twenty-three days, from July 29, 2014, when PAWC’s Field Service Representative first discovered the leak, until August 21, 2014, when PAWC first notified Ms. Lynch about the leak. Furthermore, the Field Service Representative who discovered the leak failed to notify his supervisor that a leak was present in the Complainant’s service line. In failing to formally record the leak and report it to his supervisor, the Field Service Representative placed PAWC in a tenuous situation with regard to enforcing Section 15.3 of its tariff that requires a customer to perform repairs “within ten days after receiving notice from the Company that the pipe is leaking or can no longer be used,” or otherwise face service termination after providing legal notice. Rather than providing formal notice to the Complainant when the leak was first discovered on July 29, 2014, PAWC waited until August 21, 2014 to issue its first formal, undisputed notification and only after 37,500 gallons of water were lost through the leak and the first bill after the discovery of the leak was issued.

PAWC disagrees with the ALJ’s comparison of this case to *Rome* in support of her assessment of a civil penalty against the Company because that case involved a failure by PAWC to maintain a curb box in good working condition and PAWC’s subsequent delay in repairing the curb box after it discovered it was not functioning, and the current case does not relate to any problems associated with PAWC’s equipment. Notwithstanding PAWC’s argument, we are of the opinion that some similarities exist. For instance, in *Rome,* the ALJ assessed a $9,750 civil penalty[[21]](#footnote-22) against PAWC because the utility failed to properly discontinue service, failed to maintain its equipment, and failed to recognize and investigate the loss of a large volume of water from its reserves. Although the instant proceeding does not involve non-working or failing company-owned equipment, it does involve a failure by PAWC to properly discontinue service and investigate the loss of a large volume of water from its reserves in an expeditious manner. In *Rome*, we reduced the penalty from $9,750 to $2,500.[[22]](#footnote-23) *Rome* at 19. In this proceeding, we are of the opinion that a lesser penalty of $2,000 in lieu of the $5,000 imposed by the ALJ is warranted. In this regard, taking into consideration each of the factors in Section 69.1201(c) and the fact that this appears to be an isolated incident involving PAWC which otherwise has an excellent compliance record before this Commission, we believe that it is more prudent to assess a $2,000 penalty against PAWC. The assessed $2,000 penalty is due to the failure of PAWC’s Field Service Technician to *formally* notify the Complainant upon his discovery of the leak on July 29, 2014, which resulted in PAWC being unable to effectively enforce Section 15.3 of its tariff in order to properly discontinue service. We are of the opinion that this $2,000 penalty is sufficient to deter PAWC from future violations of this type.

Before concluding, we note that while the Complainant is responsible for all costs associated with the repair of the service line leak, we acknowledge the fact that the Complainant averred that she is currently experiencing financial hardship and lacks the financial wherewithal to fix the leak. Given the circumstances surrounding the discovery of the leak and the potential deleterious impacts of the leak (*e.g.,* any continued loss of water through the leak and the potential devastating financial and environmental impacts of the leak both to PAWC and the Complainant), if it hasn’t already done so, we strongly encourage PAWC to work with the Complainant to develop an affordable payment arrangement for any lost water for which PAWC will hold the Complainant accountable.

**Conclusion**

Consistent with the foregoing discussion, we shall deny PAWC’s Exceptions, in part, and grant them, in part, and modify the Initial Decision of ALJ Dunderdale accordingly; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of PAWC, filed on October 28, 2015, to the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued October 8, 2015, are denied in part, and granted in part, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued October 8, 2015, is adopted in part, and modified in part, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Aesha Lynch, on February 18, 2015, against Pennsylvania-American Water Company is sustained, in part, and denied, in part, consistent with this Opinion and Order.

4. That within thirty (30) days of the date of entry of this Opinion and Order, Pennsylvania-American Water Company shall credit an amount of $408.50 to Complainant’s account for the water loss that was billed to the Complainant from July 29 through August 21, 2014.

5. That, within thirty (30) days of the date of entry of this Opinion and Order, Pennsylvania-American Water Company shall remit $2,000, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA, 17105-3265

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

7. That Pennsylvania-American Water Company is hereby directed to cease and desist from further violations of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, and the Regulations of this Commission, 52 Pa. Code §§ 1.1, *et seq*.

8. That after Pennsylvania-American Water Company remits $2,000 as required by Ordering Paragraph No. 5, above, the Secretary’s Bureau shall mark this proceeding closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 30, 2016

ORDER ENTERED: June 30, 2016

1. This Complaint which is an appeal of the January 7, 2015 Bureau of Consumer Services (BCS) informal decision at BCS Case No. 3313682, was served on PAWC on February 26, 2015. [↑](#footnote-ref-2)
2. On April 8, 2015, the Complainant replied to PAWC’s New Matter addressing each statement averred in the New Matter (Complainant’s Response). On April 9, 2015, the Commission issued a Secretarial Letter with an attached copy of the Complainant’s Response. The Secretarial Letter informed the Parties that the Complainant’s Response was returned because it contained no signature or verification statement pursuant to 52 Pa. Code § 5.63, 52 Pa. Code §§ 1.4(d) and 1.36, and 52 Pa. Code § 1.54 (no certificate of service) and that the Complainant had until April 20, 2015, to resubmit the signed and verified statement. [↑](#footnote-ref-3)
3. PAWC disputed this claim by the Complainant’s because it had no record that the Complainant called in the middle of July 2014. Tr. at 37. [↑](#footnote-ref-4)
4. The meter pit is located approximately fifty feet away from the Complainant’s residence and is located within the right-of-way near the street. Tr. at 19, 30, 64, 69, 99; PAWC Exh.1. The meter pit is also located along a slight downgrade between the house and a ditch which runs parallel to the road and the distribution main in front of the house. Tr. at 98-100. [↑](#footnote-ref-5)
5. On August 21, 2014, PAWC’s Field Service Representative observed that the meter at the Service Address recorded approximately 37,500 gallons of water between July 29, 2014, and August 21, 2014. Tr. at 74; PAWC Exhs. 1, 2 and 13. [↑](#footnote-ref-6)
6. The Field Service Representative testified that the installation of the meter to the meter pit did not involve any form of shoveling or digging activity that could potentially cause a leak to the line and that the entire meter relocation lasted only approximately fifteen minutes. Tr. at 43-47 and 65. [↑](#footnote-ref-7)
7. On December 22, 2014, PAWC terminated water service at the Service Address but restored service on December 31, 2014, as a courtesy due to the holidays, after the Complainant promised to fix the leak. Tr. at 33, 53, 79-81, 114-115; PAWC Exhs. 6 and 7. [↑](#footnote-ref-8)
8. *Danovitz v. Portnoy*, 399 Pa. 599, 161 A.2d 146 (1960); *In re Gaston’s Estate,* 361 Pa. 105, 62 A.2d 904 (1949); *Connor v. Connor,* 168 Pa. Superior Ct. 339, 77 A.2d 697 (1951). I.D. at 9. [↑](#footnote-ref-9)
9. According to PAWC, the Complainant used 37,500 gallons from July 29, 2014, to August 21, 2014, when the Company visited the Service Address to verify the leak. PAWC Exhs. 1 and 2. However, pursuant to the meter readings on August 25, 2014, PAWC billed the Complainant $408.50 for 39,700 gallons during the normal billing cycle. [↑](#footnote-ref-10)
10. *Feingold v. Bell Tel. Co. of Pa.,* 477 Pa. 1, 383 A.2d 791 (1977). [↑](#footnote-ref-11)
11. The $408.50 represents the amount billed in August 2014 for 39,700 gallons of lost water determined by the meter reading of August 25, 2014, due to PAWC’s failure to notify the Complainant about the water leak and to respond timely to the Complainant’s call to the Company about the standing water in her front yard. PAWC Exh. 13. [↑](#footnote-ref-12)
12. For additional clarification, based on the record evidence in this proceeding, we have modified the Company’s diagram by adding the direction that water is flowing and labeling the general area of where the leak is located. [↑](#footnote-ref-13)
13. See, *John L. Wilcox v. Library Water Company*, 27 Pa. PUC 664, 667 (*1948*); *John Nicklaus, Jr. v. Pennsylvania-American Water Company*, 77 Pa. PUC 184, 193 (*1992*), *Rodriguez v. Pennsylvania-American Water Company,* Docket No. F-2013-2388450 (Initial Decision issued April 28, 2014, Final Order entered August 5, 2014); *Rushing v. Pennsylvania-American Water Company,* Docket No. F-2015-2461147 (Order entered April 9, 2015, upholding Order Granting Interim Emergency Relief and Certifying Material Question issued on February 4, 2015). Exc. at 16. [↑](#footnote-ref-14)
14. The Company notes that the Complainant confirmed this in her testimony. *See,* Tr. at 19; Tr. at 112; and PAWC Exhibit 2. [↑](#footnote-ref-15)
15. PAWC averred that the high usage was because the newly relocated meter was now registering water from the leaking service line. [↑](#footnote-ref-16)
16. The ALJ’s Conclusion of Law No. 3 states “Complainant proved Respondent failed to notify the Complainant about the water leak when Respondent learned of its existence on July 29, 2014. I.D. at 14. [↑](#footnote-ref-17)
17. *Rome Property Management, LLC v. Pennsylvania-American Water Company*, Docket No. F-2009-2119253, Order entered December 17, 2010 (*Rome*). *Id.* at 22. [↑](#footnote-ref-18)
18. I.D. at 14. [↑](#footnote-ref-19)
19. The record in this case indicates that as of the close of the record, the Complainant still had not repaired the leak and her meter was registering over 100,000 gallons of usage per month due to the service leak. PAWC Exh. 13. [↑](#footnote-ref-20)
20. As noted, the ALJ found, and PAWC disagreed, that the instant proceeding is reminiscent of a similar failure to monitor loss by PAWC in *Rome*. I.D. at 13. [↑](#footnote-ref-21)
21. In *Rome*, the ALJ determined that a $9,750 civil penalty was fitting based upon an assessment of $1,000 for each day PAWC intentionally violated the Commission’s Regulations and Rules when it failed to effectively turn off water service during the 48-hour period from February 19, 2009 to February 21, 2009. In addition, the ALJ assessed a $7,250 civil penalty for negligent violations which amount was $250 for each of the thirty-one days from January 19, 2009, to February 19, 2009, when PAWC negligently failed to discontinue water service, failed to maintain its facilities in an operable condition and failed to detect the loss of over 200,000 gallons of water from its system. *Rome* at 9. [↑](#footnote-ref-22)
22. We assessed PAWC a $2,250 penalty which includes a $250 penalty for failure to maintain the curb box shut-off valve in proper working order and a $2,000 penalty for two days of ongoing violation when PAWC failed to take action to repair the curb box and successfully discontinue service despite knowing about the extraordinary water flows into the subject property while the property was listed as inactive in PAWC’s records. *Rome* at 19, citing *Lee v. Pennsylvania American Water Company*, Docket No. C‑2008‑2064234 (Order entered January 19, 2010). [↑](#footnote-ref-23)