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April 23, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Thomas Olup v. Pennsylvania-American Water Company
Docket No. C-2011-2247941

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is an original of its Main Brief in this matter. This document was e-filed at the Pennsylvania Public Utility Commission's website. Copies have been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE


Michael A. Grun

Encl.

cc: Certificate of Service
Administrative Law Judge Mary Long

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
• Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS OLUP	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2247941
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

**PENNSYLVANIA-AMERICAN WATER COMPANY’S
MAIN BRIEF**

And Now, pursuant to 52 Pa. Code § 5.501 and the Briefing Order issued in this proceeding, comes Pennsylvania-American Water Company (“PAWC” or “Company”), by and through its attorneys Stevens & Lee, and files its Main Brief.

I. INTRODUCTION AND STATEMENT OF THE CASE

This matter involves a Formal Complaint filed by Thomas Olup (“Complainant” or “Mr. Olup”) against PAWC in connection with a water main break that occurred in the vicinity of the Complainant’s in-law’s home at 719 Agnew Road Pittsburgh, PA (“the Agnew Road Property”) in June 2008. While the Complainant in this case goes to great pains to characterize his Complaint as involving “health and safety” concerns with PAWC’s service, it is obvious that the Complainant is actually seeking a finding that PAWC is financially responsible for water damage to his property. Indeed, the Complainant candidly admits in his Brief that his ultimate goal is to obtain a judgment against PAWC from the Court of Common Pleas for monetary damages, and that he is seeking a finding of unreasonable service from the Public Utility Commission

("Commission") in order to bolster his civil damages claim. Because the Complainant is utilizing this Commission preceding as a mere pretext for pursuing his civil claim, elements of the Complainant's damages claim permeate the record in this case. Such elements are irrelevant to the disposition of this Complaint, because the only legitimate inquiry in this case is whether PAWC failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in accordance with Section 1501 of the Public Utility Code. The Complainant has the burden of establishing by a preponderance of the evidence that PAWC failed to provide safe, adequate and reasonable service. As discussed below, the Complainant falls far short of satisfying his burden of proof. To the contrary, the record demonstrates that PAWC responded quickly and effectively to repair the water main break, restore service to the Agnew Road residents, investigate damages incurred by Agnew Road residents, process legitimate damages claims in a timely manner, and ultimately replaced the water main near Agnew Road in its entirety in 2010. There is nothing in the record to support a finding that PAWC failed to provide safe, reasonable and adequate service, and as a result, the Complainant's Complaint should be dismissed.

II. BACKGROUND AND PROCEDURAL HISTORY

This matter was initiated by the filing of a Formal Complaint by Mr. Olup. The Complaint sought compensation from PAWC for damages and the cost of repairs to the Agnew Road Property that were allegedly caused by the water main break, in addition to compensation for diminished market value. The Complaint also alleged that PAWC's actions created continuing health and safety problems within the dwelling at 719 Agnew

Road. Mr. Olup's Complaint also included a protest to PAWC's proposed residential rate increase.

On December June 22, 2011, PAWC was served with a notice of the Formal Complaint. On July 12, 2011, PAWC filed an Answer and New Matter and Preliminary Objections to the Complaint. PAWC's Preliminary Objections sought a dismissal of the Counts of the Formal Complaint which related to the Company's pending request for a rate increase, and the Counts which sought compensation and punitive damages from the Company. The Complainant filed his Answer to New Matter and Reply to Preliminary Objections on July 27, 2011.

By Interim Order dated November 17, 2011, Administrative Law Judge Mary Long ("ALJ Long") granted PAWC's Preliminary Objections in part, and dismissed the Complainant's claims related to PAWC's proposed rate increase and claim for relief in the form of monetary damages.

The evidentiary hearing was held in this matter on January 19, 2012. Mr. Olup testified on his own behalf, and also presented the testimony of a neighboring property owner, John Stenglein. Mr. Olup also introduced 12 Exhibits into the Record. PAWC presented the testimony of witnesses Matthew Macek, Jasun Stanton, Giovanni (John) DePaola, and Robert Bielich. PAWC also introduced 10 Exhibits into the Record. At the conclusion of the hearing, ALJ Long instructed the parties to file Briefs.

III. PROPOSED FINDINGS OF FACT

1. Mr. Olup's primary residence is 629 Lane Way, Pittsburgh, PA 15227. (Tr. 11). Mr. Olup also currently owns the property at 719 Agnew Road. (Tr. 11).
2. Agnew Road is a heavily traveled road. (Tr. p. 14).
3. There is a sanitary sewer line belonging to Baldwin Borough near the house at 719 Agnew Road. (Tr. p. 25)
4. On June 14th, 2008, an 8-inch diameter ductile-lined, cast-iron Pennsylvania-American Water main broke in the vicinity of 741 Agnew Road in Pittsburgh. (PAWC Exhibit 1, PAWC Exhibit 4, Tr. p. 105, 108, 124, 141.)
5. At the time of the water main break, the property at 719 Agnew Road was owned by Mr. Olup's in-laws. (Tr. p. 11)
6. The main in question experienced a split of approximately 18-20 inches. causing water to flow from the main. (Tr. p. 124).
7. A PAWC Field Service Representative responded to the report of a main break during the night of June 13th, into June 14th. (Tr. p. 108).
8. The PAWC Field Service Representative contacted the Field Supervisor on duty at the time (Matthew Macek) to request assistance. (Tr. p. 108).
9. After Mr. Macek arrived on the scene of the break, he and the Field Service Representative isolated the leak by shutting off three valves on the main. Specifically, they shut off valve numbers 92 and 93 near the top of

Agnew Road, and valve number 258, at the intersection of Agnew and Joseph Street. (Tr. p. 108, PAWC Exhibit 2).

10. After isolating the leak, Mr. Macek and the Field Service Representative called the PAWC call center to initiate the on-line customer alert system. (Tr. p. 109).
11. The Baldwin Police Department was on site at the main break to due to the hole in the road caused by the main break. (Tr. p. 109).
12. Approximately 15-20 homes were affected by the main break, including customers who lost water service temporarily. (Tr. p. 109, 135)
13. The first PAWC service representative arrived at the scene of the main break approximately 30 to 45 minutes after the break was first reported, at approximately 3:30 am on June 14th, 2008. (Tr. p. 110, 131).
14. A representative from Disaster Restoration Services also arrived on the scene at approximately 3:00 – 4:00 a.m. on June 14th, 2008. (Tr. p. 172)
15. Once PAWC arrived at the scene of the break, it took an additional 30-45 minutes to isolate the main break. (Tr. p. 110).
16. The PAWC repair crew arrived at the scene of the break at approximately 9:00 a.m. on June 14, 2008 to begin repairing the water main. (Tr. p. 111).
17. An Emergency One call was also placed to have the utility lines marked in preparation for repairing the main. (Tr. p. 112).
18. The repair crew consisted of a Backhoe Operator, a Compressor Operator, a Utility worker, and a Dump Truck Driver (Tr. p. 112).

19. The main was repaired and service was restored on the main line at approximately 5:00 or 6:00 p.m. on June 14th, 2008. (Tr. 113).
20. The repair involved the placement of two solid body sleeves, two ductile iron nipples, and an 8-inch main valve. (Tr. p. 130).
21. According to the PAWC Leak Information Report, approximately 61,000 gallons of water were lost as a result of the leak (PAWC Exhibit 4)
22. The street was re-opened to vehicle traffic at approximately 6:00 to 7:00 p.m. the same day (Tr. p. 113)
23. According to PAWC witness Matthew Macek and Jasun Stanton, standard company protocols were followed in responding to the June 14th water main break (Tr. p. 116, 138).
24. Water main breaks routinely occur throughout the Company's water distribution system. (Tr. p. 139).
25. Main breaks occur for a variety of reasons, including condition of pipe, age of pipe, condition of soil around the pipe, and weather-related issues, such as freezing and thawing of the ground and water temperature. (Tr. p. 139).
26. The water main that broke on Agnew Street in June of 2008 was installed in 1937. (Tr. 132).
27. The industry recommended standard for useful life of castiron pipe is 70 to 100 years. (Tr. p. 140.)
28. PAWC has active mains currently in use in its distribution system that are over 100 years old. (Tr. p. 140).

29. It is not PAWC's policy to investigate the cause of each and every water main break. (Tr. p. 141).
30. PAWC did not investigate the cause of the June 14, 2008 water main break. (Tr. p. 145).
31. There was nothing unusual or out of the ordinary about the June 14th 2008 water main break. (Tr. p. 145-146).
32. It is not unexpected for a water main to break three or four times over the course of 30 or 40 years. (Tr. p. 148).
33. PAWC reported the water main break to its insurance carrier Travelers on Monday, June 16, 2008. (Tr. p. 154)
34. Travelers Outside Property Investigator John DePaola contacted potential Agnew Road loss claimants on June 16, 2008, and inspected the homes on Agnew Road on June 17, 2008. (Tr. p. 155).
35. At the time of Mr. DePaola's inspection on June 17, the property at 719 Agnew Road was vacant, so a card was left at the property with the contact information for Disaster Restoration Services. (Tr. p. 156).
36. At the time of the water main break, no one resided at the 719 Agnew Road property (Tr. p. 50).
37. Mr. Olup was not present at 719 Agnew Road at the time of the water main break, and did not observe water from the main entering the residence at 719 Agnew Road. (Tr. 189).
38. Mr. Olup contacted Travelers on August 26, 2008 to initiate a damages claim. (Tr. p. 156).

39. Mr. DePaola visited the property at 719 Agnew Street on August 27, 2008, along with Bob Bielich from Disaster Restoration Services, to inspect the home for damages (Tr. p. 158).
40. Mr. DePaola spent approximately 30-45 minutes at the property and did not observe any water damage. (Tr. p. 159).
41. Mr. Olup refused to provide Mr. DePaola with a statement regarding his damages claim and alleged losses (Tr. p. 160).
42. Traveler's settled property damage claims with five property owners on Agnew Road as a result of the 2008 water main break (Tr. p. 169).
43. PAWC replaced the entire water main on Agnew Road in 2010. (Tr. p. 140-141, 146-148).
44. The water main on Agnew Road had previously broken in 1994, causing water damage to the home at 719 Agnew Road. (Tr. 175)
45. The owners of 719 Agnew Road received a settlement in the amount of \$30,000 for the damages to the property as a result of the 1994 main break. (Tr. p. 53-54).
46. Mr. Olup cannot identify any independent report which states that the PAWC water main on Agnew Road was derelict before it was replaced in 2010. (Tr. p. 69)

III. PROPOSED CONCLUSIONS OF LAW

1. As the party seeking the intervention from this Commission, Complainant bears the burden of proving Respondent violated provisions of the Public Utility Code or the Public Utility Commission's regulations in some fashion.¹
2. To establish a sufficient case and satisfy the burden of proof, Complainant must show that PAWC is responsible or accountable for the problem described in the Complaint.² Such a showing must be by a preponderance of the evidence³.
Complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent.⁴
3. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁵ More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁶
4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501.

¹ Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a).

² Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Company, 50 PA PUC 300 (1976).

³ Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 134 Pa. Commw. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den.* in 602 A.2d 863 (1992).

⁴ Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

⁵ Mill v. Comm'w., PA Public Utility Comm'n, 447 A.2d 1100 (Pa. Cmwlth.1982); Edan Transportation Corp. v. PA Public Utility Comm'n, 623 A.2d 6 (Pa. Cmwlth.1993), 2 Pa.C.S. §704

⁶ Norfolk and Western Ry. v. PA Public Utility Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa. Super.1960); Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth.1984).

5. The statutory definition of “service” is to be broadly construed.⁷
6. It is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company.⁸
7. The statute of limitations for actions seeking finding of a violation of the Public Utility Code is three years. 66 Pa.C.S.A. §3314.
8. The Complainant has failed to carry his burden of providing sufficient evidence to support a finding that PAWC violated the Public Utility Code or the Commission’s regulations, and therefore, the Complaint must be dismissed.

IV. SUMMARY OF ARGUMENT

As the Complainant, Mr. Olup bears the burden of proving the allegations of his Complaint by a preponderance of the evidence. Mr. Olup has not met this burden. Most of the Complainant’s evidence in this case relates to the alleged damages that were caused to the home at 719 Agnew Road by the 1994 and 2008 water main breaks, and has no relevance or probative value with respect to the sole legal issue in the case, which is whether PAWC has provided adequate, safe and reasonable service.

Other than Mr. Olup’s own statements, there is no evidence that PAWC was negligent in maintaining its water distribution facilities or in responding to the main break. By contrast, PAWC has provided significant evidence and testimony to prove that PAWC’s response to the main break was appropriate and timely, and that PAWC acted reasonably in all respects in connection with the maintenance of its facilities and the

⁷ Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n, 654 A.2d 72 (Pa. Cmwlth. 1995)

⁸ Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977).

response to the main break. In short, there is nothing in this record that would allow for a conclusion that PAWC violated Section 1501 of the Public Utility Code by maintaining or furnishing inefficient, unsafe, unreasonable, or inadequate service or facilities, and therefore, Mr. Olup's Complaint must be dismissed.

IV. ARGUMENT

A. Legal Standard – Burden of Proof

It is axiomatic that as the complainant seeking affirmative relief from the Commission, Mr. Olup has the burden of proving the complaint allegations by producing evidence which establishes the material facts by a preponderance of the evidence. See, *Darling v. Philadelphia Electric Co.*, F-00161139 (November 16, 1993); and 66 Pa.C.S. §332(a). The term "preponderance of the evidence" means that one party has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600, 602 (Pa. Commw. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Marguiles*, 70 A.2d 854 (Pa. 1950). Stated differently, "preponderance" is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957), *cert. denied*, 353 U.S. 965 (1957).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Commission*, 447 A.2d 1100 (Pa. Commw. 1982); *Edan Transportation Corp. v. Pa. Public Utility Commission*, 623 A.2d 6 (Pa. Commw. 1993); 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept

as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Dept. of Public Welfare*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

B. Mr. Olup Has Not Met His Burden of Proving That PAWC Provided Inadequate, Inefficient, Unsafe, or Unreasonable Service.

Mr. Olup bears the burden of establishing, by a preponderance of the evidence, that PAWC violated Section 1501 of the Public Utility Code, which states that:

“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.”

Much of Mr. Olup's documentary evidence and testimony bears no relation to the 2008 main break, and instead either relates to water main breaks from decades ago, or to the purported damage to the house at 719 Agnew Road. His Exhibits consist of two letters to PAWC's President (Exhibits A-C) which essentially mirror his Complaint and his testimony in this case, diagrams of 719 Agnew Road (Exhibits G-H), a letter from Travelers requesting information in support of his loss claim (Exhibit I), Photos of 719 Agnew Road taken months after the 2008 main break (Exhibit J), an Underground utility report (Exhibit L), an overhead map of Agnew Road (Exhibit N), contractor estimates and invoices (Exhibit O), a property tax assessment appeal stipulation that in no way

references the cause of damage to Mr. Olup's house(Exhibit P), and more reports related to the 1994 main break (Exhibit Q). It cannot be reasonably stated that any of these documents in any way support a conclusion that PAWC's service was unreasonable. Even if these documents proved that Mr. Olup's house sustained water damage as a result of the water main break (which they clearly do not), this alone would not prove that PAWC's service was unreasonable. As PAWC's witnesses testified, main breaks occur regularly, for a variety of reasons. In order to prove his case, Mr. Olup is required to submit some proof that PAWC's service was unreasonable. Mere allegations and suspicions are not sufficient for him to meet his burden of proof.

Mr. Olup's evidence of unreasonable service consists largely of his own self-serving opinion testimony about the cause of the 2008 water main break. This testimony alone is not sufficient to establish unreasonable service on the part of PAWC, for a number of reasons. First, Mr. Olup admitted that he did not witness the water main break or PAWC's response to the break.⁹ Therefore, any conclusions that he makes about the cause of the main break, the water flow from the main break, and PAWC's response to the main break are pure speculation. Secondly, while Mr. Olup held himself out as an expert on water system design and maintenance, the reality is that his experience was limited to acting as a consulting engineer for a municipal water authority nearly thirty years ago.¹⁰ This experience does not qualify him as an expert on water distribution system maintenance and repair. Third, the record contains no evidence that Mr. Olup conducted an investigation to determine the cause of the break, and Mr. Olup could not refer to any manuals, design regulations, or codes to support his conclusion that

⁹ Tr., p. 189

¹⁰ Tr., pp. 50-51

PAWC's main was "derelict".¹¹ Fourth, Mr. Olup could not provide any independent corroboration or support for his conclusions that PAWC acted unreasonably. Despite seeking corroboration of unreasonable service from numerous sources, including Baldwin Borough, Allegheny County, and the Office of Consumer Advocate, Mr. Olup could not provide any independent report or witness to support his allegation that PAWC's service was unreasonable.¹²

PAWC's witnesses thoroughly rebutted all of Mr. Olup's claims about unreasonable service. The record reflects that the water main in question was approximately 70 years old, and within its useful life.¹³ PAWC responded to the water main break within an hour of the break occurring, and had the water flow isolated and stopped within another hour.¹⁴ A repair crew arrived on the scene the following morning, and completed the repairs and restored water service by 6 p.m. that day.¹⁵ PAWC's witnesses confirmed that all company protocols were followed, including activation of the customer information system and contact to Emergency One Call.¹⁶ PAWC's witnesses testified that the cause of the break was likely weather and temperature related, and that such breaks are not unusual in a distribution system.¹⁷

PAWC's response following the repair of main break was also reasonable. PAWC's witnesses explained that representatives from Disaster Restoration Services visited all of the properties which were potentially affected by the main break in the

¹¹ Tr., pp. 70-71

¹² Tr., pp. 56-70

¹³ Tr., p. 132

¹⁴ Tr., p. 110-111, 131

¹⁵ Tr., p. 113

¹⁶ Tr., pp. 112, 116, 138

¹⁷ Tr., pp. 149-151

morning following the main break.¹⁸ No one was present at 719 Agnew Road at that time, so the representative left his card on Mr. Olup's door.¹⁹ PAWC contacted its insurance carrier on the first business day after the main break.²⁰ The insurer's representative contacted potential claimants that same day, and went onsite to inspect the affected properties the very next day.²¹ Mr. Olup was not present at 719 Agnew Road at the time of the water main break, and Mr. Olup did not contact the insurer to initiate a damages claim until August 26, 2008, more than two months after the break occurred.²² An insurance representative visited the property at 719 Agnew Street on August 27, 2008, along with a representative from Disaster Restoration Services, to inspect the home for damages.²³ The insurance representative spent approximately 30-45 minutes at the property and did not observe any water damage.²⁴ The insurer did, however, settle property damage claims with five property owners on Agnew Road who did incur damage as a result of the 2008 water main break.²⁵

With no independent evidence in the record to support Mr. Olup's theories of unreasonable service, and with substantial evidence in the evidence reflecting that PAWC also acted in a timely manner to repair the main break and process damage claims related to the main break, it is clear that Mr. Olup has not met his burden of proving unreasonable service by PAWC. To the extent that Mr. Olup is asserting other claims against PAWC, such other claims also have no merit. Mr. Olup spent considerable time at the hearing, and in his brief, discussing the 1994 PAWC water main break. Similar to

¹⁸ Tr., p. 172-173

¹⁹ Tr. p. 173

²⁰ Tr. p. 154

²¹ Tr., p. 155

²² Tr., p. 156.

²³ Tr., p. 158

²⁴ Tr., p. 159

the 2008 main break, Mr. Olup provided no evidence that the 1994 water main break constituted unreasonable service by PAWC. In any event, the statute of limitations for bringing a claim against PAWC as a result of the 1994 main break has long since expired. The statute of limitations for actions seeking finding of a violation of the Public Utility Code is three years. 66 Pa.C.S.A. §3314. Therefore, Mr. Olup's allegations regarding the 1994 main break are irrelevant to the disposition of his Complaint.

Mr. Olup's allegations that PAWC "lied" also have no merit. In his Brief, Mr. Olup asserts that PAWC lied in its rate case settlement when it stated that "Pennsylvania-American Water Company has compensated [Olup], either in cash or in-kind, approximately \$34,000." Mr. Olup alleges that this statement is a falsehood because he received no payment for the 2008 main break. But the record reflects that Mr. Olup did accept a settlement of approximately \$30,000 from PAWC on behalf of his in-laws in connection with the 1994 water main break. See Tr. p. 53-54. The statement that Mr. Olup refers to as a lie is set forth in PAWC Exhibit 11, which is an appendix to the settlement of PAWC's rate case. This Exhibit does not reference a date of the compensation paid to Mr. Olup. If the Exhibit had stated that payment was made to Mr. Olup for the 2008 main break, it would be inaccurate. But the Exhibit does not contain any date reference, and is accurate in all respects, except for the technicality that the compensation was paid to Mr. Olup as power of attorney for his in-laws.

V. CONCLUSION

There is no independent evidence in the record to support Mr. Olup's theories of unreasonable service. By contrast, PAWC provided evidence showing the Company

²⁵ Tr., p. 169

acted in a timely manner to repair the 2008 Agnew Road main break and process damage claims related to the main break. It is clear that Mr. Olup has not met his burden of proving that PAWC violated Section 1501 of the Public Utility Code by maintaining or furnishing inefficient, unsafe, unreasonable, or inadequate service or facilities, and therefore, Mr. Olup's Complaint must be dismissed.

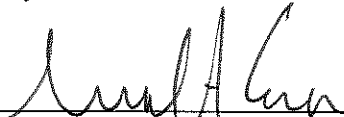
VI. PROPOSED ORDERING PARAGRAPHS

Wherefore, it is hereby ORDERED, that:

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701
2. Pursuant to 66 Pa. C.S. §§332(a), the burden of proof in this proceeding is on the Complainant.
3. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. §§332(a)
4. That the complaint of Thomas Olup against Pennsylvania American Water Company at Docket No. C-2011-2247941 is denied, with prejudice.
5. That the record at Docket No. C-2011-2247941 is marked closed.

WHEREFORE, for all of the reasons stated above, Pennsylvania American Water Company respectfully requests that this Complaint be dismissed with prejudice.

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
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Counsel for
Pennsylvania American Water Company

Dated: April 23, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

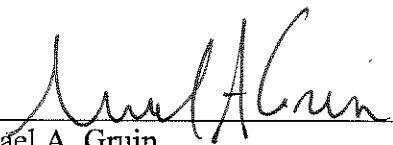
THOMAS OLUP	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2247941
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA Electronic Mail and First Class US MAIL

Jeffrey Olup, Esq.
Bassi, McCune, & Vreeland, P.C.
111 Fallowfield Ave.
PO Box 144
Charleroi, PA 15022



Michael A. Gruin

DATED: April 23, 2012