

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com  
Direct Fax: (610) 988-0852

October 28, 2015

**VIA ELECTRONIC FILING**

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Aesha Lynch v. Pennsylvania-American Water Company**  
**Docket No. F-2015-2468979**

Dear Secretary Chiavetta:

Enclosed for filing please find the Exceptions of Pennsylvania-American Water Company to the Initial Decision issued in the above-referenced matter. A copy of this document has been served upon the parties of record in accordance with the attached Certificate of Service.

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

Sincerely,

STEVENS & LEE



Michael A. Gruin

Enclosure

cc: Certificate of Service  
Administrative Law Judge Katrina Dunderdale, via First Class U.S. Mail  
Cheryl Walker-Davis, Director, Office of Special Assistants, via First Class U.S. Mail (hardcopy and Word version on CD-Rom )

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A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AESHA LYNCH	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. F-2015-2468979
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

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**EXCEPTIONS OF  
PENNSYLVANIA-AMERICAN WATER COMPANY**

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Pursuant to 52 Pa Code § 5.533, Pennsylvania-American Water Company (“PAWC” or “the Company”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter.

As set forth below, the I.D.’s conclusion that PAWC failed to provide reasonable and adequate customer service is not supported by the evidence in the record, and should be rejected. In the alternative, if the Commission determines that the Company failed to provide reasonable and adequate service to the customer, the totality of the circumstances of the case do not justify the imposition of a civil penalty or the billing adjustment recommended by the I.D.

**I. INTRODUCTION AND SUMMARY OF EXCEPTIONS**

This case involves a leak on the Complainant’s service line, which is the pipe extending from the curb, property line or utility connection to the customer’s point of consumption.<sup>1</sup> The service line leak was discovered for the first time on July 29, 2014,

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<sup>1</sup> 52 Pa. Code §65.1, *See Also* PAWC Exhibit 14

when the Company moved the Complainant's meter from a location inside her home to a meter pit located in the utility right of way outside of the home.

The I.D. concludes that PAWC provided unreasonable and inadequate service to the Complainant, based solely on a finding that PAWC did not notify the Complainant of the existence of the service line leak at her property between July 29, 2014 and August 21, 2014, a period of twenty-three days. As set forth below, this conclusion is not supported by substantial evidence in the record and should be rejected.

The record demonstrates that the Complainant's service line was plastic, and was approximately 30-40 years old. *Tr., at pp. 68-69*. At some point, the service line leak developed a leak, which is not an uncommon occurrence. *Tr., p. 69*. The consumption caused by the service line leak did not register on the Complainant's meter while the meter was in the Complainant's home, because the leak was before the meter; i.e., it was an unmetered leak. *Tr., pp. 67-68*. However, once the meter was moved to the meter pit, the meter immediately registered the usage caused by the leak. *Tr., p. 75*. The PAWC service technician who moved the meter on July 29, 2014 testified, with clarity and specificity, that he informed the Complainant's husband of the existence of the leak on the same day that he moved the meter, and also informed him that the Lynches should retain a contractor to have the leak repaired. *Tr., pp. 93-95, 104, 105*. PAWC's witness reiterated this testimony multiple times, and the Complainant did not rebut this testimony. As such, there is no basis for concluding that PAWC did not notify the Complainant about the existence of the leak on the day the leak was discovered.

Furthermore, even if there is a dispute about the exact date when the Complainant was first notified about the leak, PAWC clearly acted reasonably and adequately in its

dealings with the Complainant, such that no violation or civil penalty is warranted. The existence of the leak was conveyed to the Complainant's husband on the day the meter was moved. The Company then re-verified the existence of the leak twenty-three days later, and again informed Mrs. Lynch of the existence of the leak at that time. Between August and December 2014, the Company informed Mrs. Lynch of her responsibility to repair the service line leak four separate times via telephone, and three separate times in writing. The Company also re-verified the existence of the leak two additional times.

Despite receiving multiple notices about the existence of the service line leak and her responsibility to repair it, the Complainant took no action to have the service line leak repaired. After multiple notices spanning several months, the Company ultimately terminated the Complainant's water service for failing to have the service line leak repaired. But the Company then restored the water service nine days later as a goodwill gesture based on the Complainant's statement that she was having the leak repaired. The Company also provided the Complainant with a payment arrangement to address her unpaid balance.

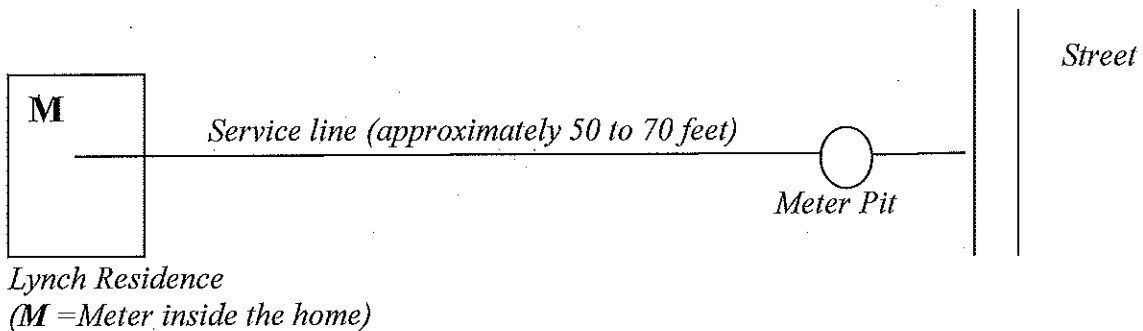
In short, the actions by the Company in the form of its verifications of the service line leak, its notices to the Complainant of her responsibility to repair the leak, the amount of time that the Company provided the Complainant to repair the leak, and the Company's handling of the termination and restoration of the Complainant's water service were fair, reasonable, and fully in accordance with the Company's tariffs and the Commissions regulations. As such, no finding of a violation or civil penalty is warranted under the facts and circumstances of this case.

**II. FACTUAL BACKGROUND**

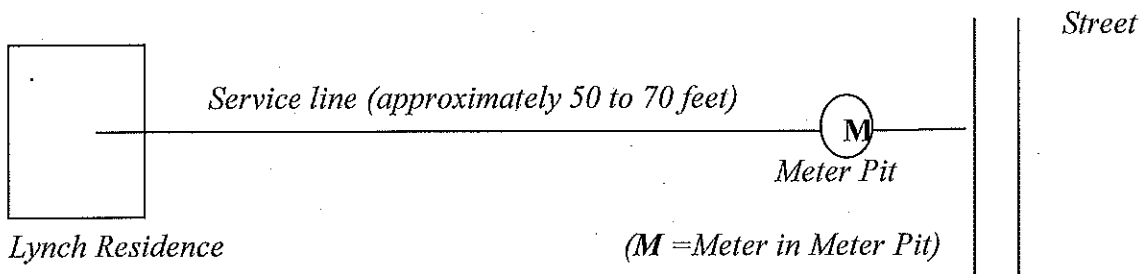
Prior to July 29, 2014, the Complainant's water meter was located inside her home, near where the service line connected to the Complainant's internal plumbing. Because the meter was located behind the service line, it was impossible for the meter to register the water consumption that would be caused by a leaking service line. On July 29, 2014, as part of an ongoing program of relocating meters from inside homes to external meter pits, a Company service technician moved the Complainant's meter to a pre-existing meter pit near the street connection. *Tr. pp. 59-60.*

The diagram below depicts the Complainant's meter locations prior to July 29, 2014 and after July 29, 2014, based on testimony in the record (See generally, *Tr. pp. 60-69*):

**Before July 29, 2014**



**After July 29, 2014**



Upon relocating the Complainant's meter to the meter pit, the Company's service technician determined that the Complainant's service line was leaking, based on movement on the meter while the water was shut-off inside of the home. *Tr., pp. 67-68.* The Company service technician who moved the meter and identified the leak testified at the hearing - repeatedly and unequivocally - that he notified the Complainant's husband of the service line leak on the same day that the meter was moved, which was July 29, 2014. *Tr., pp. 93-95, 104, 105.* Mrs. Lynch's position, however, is that she was not aware of the leak until August 21, 2014. *Tr., p. 19.* While there may be a dispute as to the exact date when the Complainant became aware of the service line leak, the record reflects that the latest the Complainant became aware of the service line leak was on August 21, 2014, approximately 23 days after the Company moved the meter and first became aware of the leak.

The Complainant contacted the Company on August 20, 2014 after receiving a bill which reflected higher than normal consumption caused by the service line leak. *Tr., p. 112.* The very next day - August 21, 2014 - a Company field service representative visited the property and verified that there was still a leak on the Complainant's service line. *Tr., p. 112 and PAWC Exhibit 2.* The Complainant contacted the Company again on August 23, 2014, September 23, 2014, September 29, 2014, and October 2, 2014, and on each of these occasions she was informed that it was her responsibility to repair the leak, and that the Company would issue her an adjustment on her bill once she provided proof of the repairs. *Tr., p. 113.*

On October 27, 2014, a Company field service representative again visited the property and again verified that there was still a leak on the Complainant's service line. *Tr., p. 114 and PAWC Exhibit 3.* On November 4, 2015, the Company provided the Complainant with a 60-month payment arrangement. *Tr. p. 114.* On November 5, 2015, the Company mailed the Complainant a letter to inform her that her service line was still leaking and that if she did not repair the service line, her service may be terminated. *Tr., p. 114 and PAWC Exhibit 5.* On December 4, 2014, the Company mailed the Complainant a 10-day termination notice, due to her failure to repair the service line leak. *Tr., p. 114 and PAWC Exhibit 11.* On December 10, 2014, a 3-day termination notice was posted at the Complainant's property. *Tr., p. 114 and PAWC Exhibit 5.*

On December 22, 2014, the Company terminated the Complainant's water service for failure to repair the service line leak. *Tr., p. 114 and PAWC Exhibit 6.* However, on December 31, 2014, PAWC's Compliance Manager Tawana Dean personally spoke to the Complainant and agreed to restore the Complainant's water service, because the Complainant indicated that she would be hiring a plumber to repair the service line leak. *Tr., p. 115 and PAWC Exhibit 7.*

On January 2, 2015, the Company replaced the meter in the Complainant's meter pit with a newer model meter. *Tr., p. 115 and PAWC Exhibit 8.* On January 12, 2015, a Company field service representative again visited the property and again verified that there was still a leak on the Complainant's service line. *Tr., p. 115 and PAWC Exhibit 9.*

All told, the Company:

- verified the existence of a service line leak on four separate occasions (July 29, 2014, August 21, 2014, October 27, 2014 and January 12, 2015),
- informed Mr. Lynch personally about the service line leak on one occasion (July 29, 2014),
- informed Mrs. Lynch of the need to repair the service line leak via telephone on four separate occasions (August 20, 2014, September 23, 2014, September 29, 2014, and October 2, 2014), and
- provided Mrs. Lynch with written notice of the service line leak on three separate occasions (November 5, 2014, December 4, 2014, and December 10, 2014).

Yet, despite the multiple actions by the Company to both verify the existence of the service line leak and provide Mrs. Lynch with notice of her responsibility to repair the service line leak, Mrs. Lynch did not have the service line leak repaired. By the time the Company terminated the Complainant's water service on December 22, 2014, the Complainant had been aware of the service line leak for over four months, and had been informed of the duty to repair the leak at least four separate times.

While the Company was not required to do so, the Company restored the Complainant's water service on December 31, 2014 as an act of goodwill, based on Ms. Lynch's indication that she was hiring a plumber to repair the leak. But as of the close of the record in this case, the Complainant still had not repaired her service line leak, her meter was registering over 100,000 gallons of usage per month as a result of the service



line leak, and the unpaid balance on her account had grown to over \$7,400. *PAWC*

*Exhibit 13.*

### **III. PROCEDURAL HISTORY**

PAWC was served with the Formal Complaint filed by Ms. Lynch on February 26, 2015. The Formal Complaint asserted that the Company damaged Mrs. Lynch's service line when the Company moved Mrs. Lynch's meter from the crawl space inside of her home to the meter pit outside of her home, and caused a leak on the service line which resulted in higher water bills. For relief, the Complainant requested the Commission to order PAWC to repair the alleged damage and adjust her bill to reflect normal consumption.

On March 18, 2015, PAWC filed an Answer and New Matter in response to the Complaint. PAWC's Answer admitted that it moved the meter from the crawlspace into the meter pit, but denies that the relocation of the meter caused the water leak. PAWC's New Matter asserted that the Company had informed the Complainant of the existence of the service line leak multiple times and informed her that it was her responsibility to repair, but the Complainant did not repair the service line. The New Matter also asserted that the Complainant's water service was terminated after proper notice, but that the Company restored her service as a courtesy. The New Matter also stated that once the Complainant provided proof that the service line was repaired, the Company would issue her a bill adjustment and a payment plan to address the balance on the Complainant's account.

A telephonic hearing on the matter was held on May 21, 2015. Mrs. Lynch and her husband Scott Lynch testified on behalf of the Complainant and offered one Exhibit

into evidence. PAWC presented the testimony of two witnesses and offered fourteen (14) Exhibits into evidence. PAWC's two witnesses were Tawana Dean, Compliance Manager, and James Myers, a utility worker in the Company's distribution department. The hearing generated a transcription consisting of 154 pages.

On October 8, 2015, the I.D. was issued in this matter. The I.D. found that while "PAWC appears to have caused the leak", the Complainant had not met her burden of proving that PAWC did, in fact, cause the leak. However, the I.D. concluded that PAWC had provided unreasonable service by not notifying Mrs. Lynch of the existence of a service line leak for approximately one month after PAWC's field representative knew there was a leak. The I.D. ordered PAWC to provide Mrs. Lynch with a bill adjustment in the amount of \$408.50, which represents the 37,500 gallons of usage that was recorded between July 29, 2014 and August 21, 2014. The I.D. also recommended a civil penalty in the amount of \$5000 for this purported violation.

#### **IV. EXCEPTIONS**

##### **Exception No. 1**

##### **The I.D. Incorrectly Holds That The Complainant's Service Line Leak Started on July 29, 2014. (I.D. Discussion, at page 11)**

In the I.D., ALJ states that she believes that PAWC "appears to have created a serious water leak on the Complainant's property after PAWC moved the old meter from the crawlspace out to the meter pit." I.D., at p. 10. While the ALJ ultimately concluded that the Complainant did not meet her burden of proving that PAWC did, in fact, cause the leak, the I.D. includes a finding that the leak "started" on July 29, 2014. The finding

is inherent in the conclusion on page 11 of the I.D. 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.” (Emphasis added). The 37,500 gallon consumption figure was established as the amount of consumption that was recorded from July 29, 2014 until August 21, 2014 (*Tr., pg. 74, PAWC Exhibits 1, 2 and 13*). To the extent that this passage constitutes a finding that the leak started on July 29, 2014, such a finding is not supported by the evidence in the record.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984). Mere bald assertions, personal opinions, or perceptions do not constitute evidence. *McCauley v. Pennsylvania Electric Company*, 2014 WL 1390779 (Pa.P.U.C.); *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000).

As PAWC's witness testified, there is no way to know when the service line leak started, because until the meter was moved to the meter pit on July 29, 2014, the leak was not being registered on the meter. July 29, 2014 marks the date when the leak was first discovered and reflected on the meter – but it does not mark the date when the leak first started. *See Transcript, at pages 67-69:*

*“ Q. if there would be ---- if there was a leak on the Lynches' service line and the meter was still in the home, would that leak register to you based on the meter?*

*A. No.*

*Q. Why not?*

*A. Because the leak is before the meter, so that's why it didn't show any movement until I put the meter on the other side of the leak, you know, in the pit.*

*Q. So based on your experience in doing meter installations and your observations at this property, what conclusions do you draw about when the leak began?*

*A. Well, it could've been years. I mean, just because there's no water coming up doesn't mean there's not a leak. I mean, the leak could be going on for years, going down into the rock, and --- but the only way you'll see it, in this particular case, was because we put the meter out in the street. And then it would show any usage, you know, whether it be in the house or before the house. That's why we do the whole project like we did. We put the meters in to find and certify leaks.*

*These service lines are 30, 40 years old. I mean, they're plastic. They don't last forever. I mean, you get them --- every day, we have these things. It's not uncommon.”*

PAWC's witness James Myers also testified that there was no way that he could have caused the service line leak when he moved the meter to the meter pit. Mr. Myers testified that he had installed hundreds of meters during his tenure at PAWC. *Tr., p. 67.* When asked if there was any possible way that his installation of the meter into the meter pit caused damage to the Lynch's service line, Mr. Myers testified “Absolutely not.” *Tr., p. 67.* He explained that the meter setup was pre-existing in the meter pit, and the placement of the meter involved putting the meter into the pre-existing setup, and

tightening two nuts. *Tr. , pp. 66-67.* He described it as a “very simple job ( *Tr. p. 67*), and the only tools utilized were a “pair of Channellock pliers” and that there was no digging required to place the meter into the pit. (*Tr. p. 65*).

Mr. Myers also explained that there was no way to know when the service line leak started. During the time that the meter was in the Complainant’s home, a leak on the service line would not register on the meter, because the water would be exiting the pipe before it passed through the meter. Ms. Myers testified that the service line leak could have been there for years. *Tr. p. 68.* He explained that the service lines in Ms. Lynch’s neighborhood are plastic, and were installed 30 to 40 years ago, and that is was not uncommon for these service lines to develop leaks. *Tr., pp. 68-69.* He testified that there could be multiple service line leaks, but there was no way to know for sure until the service line was dug up. *Tr., p. 69.*

In short, the Company provided credible testimony from the service technician who installed the meter that there was no possible way that he damaged the service line at the time he installed the meter on July 29, 2014. The Complainant did not present any evidence whatsoever regarding the possible cause of the service line leak. The only fact established by the evidence in the record was that the service line leak was first discovered on July 29, 2014, but there is no evidence in the record to support a finding that the service line leak started on July 29, 2014. As such, the finding by the ALJ that the leak started on July 29, 2014 should be rejected.

**Exception No. 2**

**The I.D. Incorrectly Concludes that PAWC Provided Unreasonable And Inadequate Service to the Complainant. (I.D. Discussion, at pages 10 -11, Conclusion of Law No. 7)**

The central conclusion of the I.D. is that “PAWC failed to notify the customer about the existence of the leak for one month after PAWC’s field representative knew there was a leak”. *I.D.*, p. 11. This conclusion is the sole basis for the violation and civil penalty recommended by the I.D. As set forth below, this central conclusion is not supported by substantial evidence, and even if it was supported by substantial evidence, it does not warrant the finding of a violation or the imposition of a civil penalty against PAWC.

A. PAWC’s Witness Provided Credible Testimony That He Informed Mr. Lynch About Existence of The Service Line Leak The Day The Meter Was Moved

As set forth above, PAWC’s witness James Myers was the service technician who moved the Complainant’s meter from the crawlspace in the Lynch home to the meter pit outside the home on July 29, 2014. *See Tr. pp. 66-71, and PAWC Exhibit 1.* Mr. Myers repeatedly and consistently testified that he informed Mr. Lynch about the existence of the service line leak on the same day he installed the meter in the meter pit. First, in response to a question from the ALJ, Mr. Myers explained that he informed Mr. Lynch about the service line leak. The relevant passage from that exchange appears on Transcript pages 93-95, as follows:

*JUDGE:*

*So when you left, was the meter registering water usage?*

A. Yes.

JUDGE:

*Why did you leave?*

A. *Well, at that point, after I, you know, certified that there was a leak, I told him ---. I'm the one that told him to call a plumber. And there's nothing else I can do at that point. I don't want to shut their water off, because I mean, that wouldn't be right to do. I mean, they have a process to go through.*

JUDGE:

*So you're telling him ---?*

A. *The service line ---.*

JUDGE:

*I'm sorry.*

A. *I'm sorry?*

JUDGE:

*I'm sorry. I didn't mean to interrupt.*

A. *Go on.*

JUDGE:

*But you're telling him that ---? Excuse me, you're telling him that ---. You're telling me that in July of last year --- July 29th, I guess, of last year*

A. *Uh-huh (yes).*

JUDGE:

*--- after you moved the meter to the meter pit and tightened up the jumper bar and so on, you knew that there was a leak. And you're saying that at that time you told him he has a service leak and he needs to get it repaired?*

A. *Correct.*

JUDGE:

*And you're convinced it was on July 29th?*

A. *Well, that's what the order is, when I moved the meter, so yes.*

JUDGE:

*So is there anything on ---? And I believe it was service order one. Is there anything on service order one that shows that there's --- you found a leak that day?*

A. No.

JUDGE:

*But you knew that there was a leak on the service line that day; is that correct?*

A. Yes, I told the customer.

JUDGE:

*Okay. Can you recall why it is you did not put that in your service order?*

A. No. To be honest, I can't.

The issue of whether or not Mr. Myers informed the Lynches of the leak was not addressed during his direct examination or by the Lynches in their testimony, but the issue was raised *sua sponte* by the ALJ during her questioning of Mr. Myers. Mr. Myers provided the information in the course of answering the question about leaving the property at the conclusion of his service. Then, upon being questioned further about the issue, Mr. Myers remained steadfast and provided details about the conversation, including his thought process during that discussion. Nothing about Mr. Myers description of this conversation casts any doubt on its veracity.

Throughout the remainder of his testimony, Mr. Myers adamantly reiterated that he informed Mr. Lynch about the existence of the service line leak on July 29, 2014. See *Tr. p. 104, line 4* (“that’s why I told him to get a contractor to come out”); *Tr., p. 106, line 6* (“I told your husband though. He was there when I moved the meter, ma’am”) and *line 23* (“I know I verified the leak, I know I told the customer about it”). The Complainant did not provide any evidence or testimony to rebut Mr. Myers’ repeated assertion that he informed Mr. Lynch of the leaking service line on the date that the meter was moved to the pit. In short, the totality of the evidence cannot support a conclusion



that the Company did not notify the Lynches of a leak on their service line when the leak was first discovered on July 29, 2014.

B. The Company's efforts to inform the Complainant of the existence of the service line leak were reasonable and adequate.

When viewed in their entirety, the Company's actions in notifying Mrs. Lynch of the service line leak and its overall handling of the situation were clearly reasonable and adequate. The Company's tariff makes it clear that customers have full responsibility for the installation repair, replacement, and maintenance of their service lines. See PAWC Tariff Water- PA PUC No. 4, Rule 4.9 (*PAWC Exhibit 14*). This principle has been upheld by the Commission on multiple occasions. See. e.g., *John L. Wilcox v. Library Water Company*, 27 Pa.PUC 664, 667 (1948); *John Nicklas, Jr. v. Pennsylvania American Water Company*, 77 Pa.PUC 184, 193 (1992), *Rodriquez 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). The Commission's regulations and the Company's tariff are silent regarding the obligation of the Company to notify a customer of the existence of a service line leak, but the Company is obligated to provide reasonable and adequate service pursuant to 66 Pa. C.S. § 1501. Here, the record demonstrates that the Company's actions in the handling of the service line leak at Ms. Lynch's property were reasonable and adequate.

First, even if Mr. Myer's oral communication of the leak to Mr. Lynch on July 29, 2014 is ignored, the undisputed evidence reflects that the Company notified Ms. Lynch of the existence of the leak again on August 21, 2014 – twenty-three days after the leak was first discovered, and shortly after the issuance of the first bill following the move of the meter. Mrs. Lynch herself confirmed this in her testimony. *See, Tr., p. 19. See also Tr., p. 112 and PAWC Exhibit 2.* The Company respectfully submits that notifying a customer of a service line leak twenty-three days after the leak is discovered is not unreasonable.

Furthermore, the Company's subsequent actions in responding to the existence of the service line leak were clearly reasonable and adequate. As set forth above in detail, 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.

In evaluating the Company's response to this situation, it also must be recognized that earlier notice of the leak would not have changed the outcome of this situation. The reason for this is that the Complainant demonstrated no effort to have the service line leak repaired, despite being provided with numerous notices of the leak and despite her service being temporarily shut-off because of the leak. If the Complainant had gotten the service line leak repaired as the Company repeatedly requested, the Company would have

provided her with a bill credit, and this matter almost certainly would have been resolved without the need for Commission intervention. The I.D.'s analysis of the dispute completely ignores the customer's responsibility to repair the service line, and places blame for the situation entirely with the Company. The fact is that whether the Company provided the customer with notice of the leak the day it was discovered or twenty-three days later made no difference in this case, because upon receiving notice of the leak the Complainant simply refused to have it repaired.

### **Exception No. 3**

#### **The I.D.'s Order Of A Billing Adjustment Is Not Justified and Is Contrary to PAWC's Tariff Provisions Regarding Leak Adjustments. (I.D. Discussion, at pages 10 -11, Ordering Paragraph No. 6)**

The I.D. recommends ordering PAWC to "credit to 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." I.D., p. 11. This finding is not justified by the facts in evidence and ignores the tariff provisions which regulate credits for service line leaks.

First of all, there is no evidence to suggest that the Company did not timely respond to the Complainant. PAWC's witness Tawana Dean testified that the Company had no record of Ms. Lynch contacting the Company to complain about a leak before August 20, 2014. *Tr., pp. 111, 131*. Once Ms. Lynch did contact the Company about the leak on August 20, the Company sent a service technician to verify the existence of the service line leak the very next day – August 21, 2014. *Tr., p. 112 and PAWC Exhibit 2*.

So, to the extent that the I.D. finds that PAWC did not adequately respond to the Complainant's contacts regarding the leak, such a finding is not supported by any evidence in the record.

Secondly, the I.D.'s ordering of a billing adjustment for all of Ms. Lynch's water usage is not warranted and is contrary to the clear provisions of the Company's Commission-approved Tariff. Rule 4.9 of the Company's tariff provides that when a leak is found in a customer's service pipe, the Company shall credit the customer with a one-time 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. *PAWC Exhibit 14*. As a practical matter, the Company repeatedly informed Mrs. Lynch that it would provide her an adjustment upon receiving verification of the repair, and would work with the Complainant and do more than what is required in the tariff regarding her bill. *See PAWC's Answer and New Matter*, at paragraph 28. *See also, Tr. p. 113 and 123*. But PAWC's tariff makes it clear that a bill adjustment can only be issued after the customer provides proof that the leak has been repaired, and the Tariff provides a methodology for calculating the appropriate adjustment. The I.D.'s requirement to provide a full credit for all water charges incurred between July 29, 2014 and August 21, 2014, without the requirement to repair the service line, contradicts the Company's tariff and should be rejected.

**Exception No. 4**

**The I.D.'s Recommendation Of A Civil Penalty Is Not Warranted Under the Facts and Circumstances Of This Case. (I.D. Discussion, at pages 11-13, Ordering Paragraphs 4-5)**

As set forth above, the record in this case does not justify a finding of a violation against PAWC for inadequate or unreasonable service. But assuming *arguendo* that PAWC is determined not to have provided the Complainant with timely notice of her service line leak, and that this constituted unreasonable service, no civil penalty is justified under the facts and circumstances of this case.

After applying the ten *Rosi* factors to the totality of the facts and circumstances of this case, it is evident that a civil penalty is not warranted. The first factor – whether the violation is of a serious nature - weighs against the imposition of a higher civil penalty. While all violations of the Public Utility Code should be considered serious to some extent, the violation found by the I.D. related to lack of immediate notice of the existence of a service line leak. This lack of immediate notice did not implicate a safety concern, possible injury, or property damage. And it is undisputed that additional notices were provided to the Complainant about the service line leak. As such, the violation found by the ALJ is closer to an “administrative or technical error” than it is to a serious violation.

The second factor – whether the resulting consequences were of a serious nature – also weighs against the imposition of a civil penalty. Again, this case did not involve property damage or personal injury. The ALJ found that the consequences of the Company’s actions were serious because the violation “cost the Complainant a significant sum of money”. This finding is simply not correct, because 1) the Complainant has not yet paid her water bill for the period in question (See *PAWC*

*Exhibit 13*) and 2) PAWC repeatedly indicated that it would provide the Complainant with a billing adjustment after the leak was repaired (*Tr. p. 113 and 123.*).

The ALJ's analysis of the third *Rosi* factor finds that PAWC acted intentionally to withhold information about the service line leak from the Complainant. Respectfully, this finding is not supported by evidence and simply makes no sense. The violation found by the ALJ relates to a lack of notice, and is based in part of the fact that Mr. Myers did not document the service line leak in his notes. There is no evidence in the record to suggest that Mr. Myers intentionally sought to hide information from the Lynches. To the contrary, he testified repeatedly that he informed Mr. Lynch about the existence of the service line leak. With respect to the lack of a note in the service records regarding his discussion with Mr. Lynch, Mr. Myers testified that he could not remember why he did not place a note in the service records, but this does not provide a factual basis for finding that Mr. Myers acted intentionally.

With respect to the fourth *Rosi* factor, the ALJ found that a higher penalty is justified because PAWC did not provide remedial training or instruction regarding notifications to customers of service line leaks. PAWC respectfully disagrees with this conclusion, because it is based on a conclusion that Mr. Myers did not notify the Complainant of the service line leak, which is not supported by the record.

With respect to the fifth and sixth *Rosi* factors, the ALJ correctly notes that only one customer was affected, and that there is no record of a poor compliance history by PAWC, both of which weigh against a higher penalty. The ALJ also correctly noted that the seventh *Rosi* factor is not applicable.

With respect to the eighth *Rosi* factor (the amount of a civil penalty necessary to deter future violations), the ALJ concluded that a higher civil penalty was needed. In doing so, the ALJ incorrectly held that PAWC failed to recognize lost water from July 29, 2014 to August 21, 2014 “despite numerous calls for assistance from the Complainant”. This finding is directly contradicted by the evidence in the record. PAWC’s witness Tawana Dean testified that she reviewed the Company’s customer contact records, and the Company has no record of the Lynches contacting PAWC in July of 2014 at all, and no record of them calling regarding the service line leak or their meter until August 20, 2014. *See Tr., p. 111, pp. 125-126.* Furthermore, the case cited by the ALJ as being similar to the Lynch case (*Rome Property Management, LLC v. Pennsylvania American Water Company*, Docket No. F-2009-2119253) is notably different from the Lynch case. The *Rome Property Management* case involved failure to maintain a curb box in working order, which resulted in water flowing to a vacant rental property. The civil penalty imposed in that case related to the initial failure to maintain the curb box, and the subsequent delay in repairing the curb box after it was discovered to be not functioning. The current case, by contrast, does not relate to any problems with the Company’s equipment. Rather, the case involves a leak on the customer-owned service line. The Company has no control over or responsibility for the maintenance and repair of customer-owned service lines, so a civil penalty in this case will not have the deterrent effect that was at issue in the *Rome Property Management* case.

As the ALJ correctly noted in evaluating the ninth *Rosi* factor, no party cited to any past Commission case that addressed a utility’s responsibility to notify customers of

leaks in their service lines. To impose a civil penalty in this case when no clear regulation or rule has been violated would be improper and unjust.

In analyzing the appropriate civil penalty, the ALJ also held that failing to notify the Complainant of the service line leak denied the Complainant the opportunity to mitigate the water loss, which warranted a higher civil penalty. But this conclusion ignores the fact that the Complainant took no steps to mitigate the water loss despite being notified about it four times by telephone and three times in writing. Assuming *arguendo* that the Complainant was first notified about the service line leak on August 21 2014 rather than July 29, 2014, there is nothing in the record to suggest that the Complainant's actions would have been any different if she was notified about the leak earlier. In other words, the Company should not be penalized for denying the Complainant with the ability to mitigate a water loss for a period of twenty –three days, when the Complainant demonstrated no effort to actually mitigate that water loss in the following eight months despite receiving multiple notices of the need to do so.

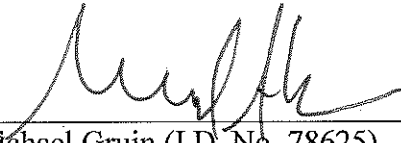
## V. CONCLUSION

For the reasons set forth above, Pennsylvania-American Water Company respectfully requests that the Commission issue an Order which:

- 1) rejects the I.D.'s finding that it provided unreasonable or inadequate service;
- 2) rejects the I.D.'s finding that the Complainant's water leak started on July 29, 2014;
- 3) rejects the I.D.'s order of a billing adjustment to the Complainant's account; and
- 4) rejects the I.D.'s proposed civil penalty; and
- 5) dismisses the Complaint in its entirety.



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Gruin", written over a horizontal line.

Michael Gruin (I.D. No. 78625)  
Stevens & Lee  
17 North 2<sup>nd</sup> Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
Telephone: 717-234-1090  
mag@stevenslee.com

Counsel for Pennsylvania-American  
Water Company

Dated: October 28, 2015

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AESHA LYNCH

Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY

Respondent

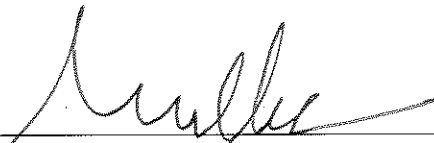
Docket No. F-2015-2468979

**CERTIFICATE OF SERVICE**

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

VIA FIRST CLASS US MAIL

Aesha Lynch  
5325 Apache Trail  
Tobyhanna, PA 18466

  
\_\_\_\_\_  
Michael A. Gruin

DATED: October 28, 2015