

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

September 28, 2018

VIA ELECTRONIC FILING

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

RE: Margaret Collins v. Pennsylvania-American Water Company
Docket No. F-2017-2628770

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is an original of its Main Brief in this matter. A copy has 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. Gruin

Enclosure

cc: Administrative Law Judge Jeffrey Watson

Certificate of Service

Allentown • Bala Cynwyd • Charleston • Cleveland • Fargo • Fort Lauderdale • Harrisburg • Lancaster
New York • Philadelphia • Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington

A PROFESSIONAL CORPORATION

SL1 1542958v1 101575.00417

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARGARET COLLINS	:	
Complainant	:	
	:	
v.	:	Docket No. F-2017-2628770
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

BRIEF OF PENNSYLVANIA-AMERICAN WATER COMPANY

In accordance with the July 9, 2018 Interim Order Setting Briefing Schedule, Pennsylvania-American Water Company (“PAWC” or “Company”), by and through its attorneys Stevens & Lee, P.C., files the Brief in the above-referenced matter.

I. BACKGROUND AND INTRODUCTION

On or about October 10, 2017, PAWC was served with a notice of the Formal Complaint (“Complaint”) filed by the Complainant Margaret Collins. The Complaint made various allegations about charges and liens imposed by the Scranton Sewer Authority with respect to Ms. Collins’ property in Scranton, Pennsylvania. PAWC filed an Answer and New Matter on November 10, 2017. PAWC’s Answer and New Matter denied that PAWC was the manager of the Scranton Sewer Authority, and stated that the Commission does not have jurisdiction over municipal liens, statutory consumer protection claims, or claims for refunds of utility charges that are more than four years old.

The evidentiary hearing in this matter was held on July 2, 2018. Ms. Collins testified on her behalf, and submitted five Exhibits into the record. PAWC presented the

testimony of one witness, Regulatory Compliance Manager Tawana Dean, and submitted one exhibit into the record.

At the hearing, Ms. Collins explained that much of her complaint revolved around a long-running dispute with the Scranton Sewer Authority regarding unpaid sewer charges. Ms. Collins confirmed that she was not contesting or disputing her charges for water service from PAWC, or her charges for wastewater service from PAWC. N.T., pp. 61-62. She also stated that she was disputing a termination of her water service that took place in 2001. N.T., p. 62.

PAWC's witness confirmed that PAWC purchased the assets of the Scranton Sewer Authority on December 29, 2016, and at that time PAWC became Ms. Collins wastewater provider. N.T., p. 67. ¹ PAWC's witness explained that initially there was a balance of \$325.67 on Ms. Collins wastewater account when her account transferred from the Scranton Sewer Authority to PAWC, but then PAWC issued a courtesy credit adjustment for that entire amount. N.T. p. 68 and PAWC Ex. 1. PAWC's witness confirmed that it had no liens on Ms. Collins property, and that PAWC never issued any bills on behalf of the Scranton Sewer Authority, and never served as a private manager of the Scranton Sewer Authority. N.T. pp. 68-69. PAWC's witness also confirmed that Ms. Collins' account with PAWC was current, and the only charges owing were charges for the most recent billing period in the amount of \$23.23. N.T. p. 71

¹ PAWC's acquisition of the assets of the Scranton Sewer Authority was approved by the Commission by Order entered in Docket No. A-2016-2537209 on October 19, 2016.

II. ARGUMENT

A. Ms. Collins' complaint relates to liens allegedly imposed by the Scranton Sewer Authority, which are outside of the Commission's jurisdiction.

The evidence and testimony presented by Ms. Collins demonstrate that her complaint relates to a dispute with the Scranton Sewer Authority over wastewater charges from the early 2000's, and a lien placed on her home by the Scranton Sewer Authority. She explicitly confirmed that she is not disputing any of PAWC's charges to her for water or wastewater service. N.T. pp. 61-62.

The Commission has definitively ruled that it does not have jurisdiction over municipal liens imposed pursuant to the Municipal Claims and Tax Liens Act. See *SBG Management Services v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered December 8, 2016, Reconsideration denied by Orders entered May 18, 2018 (“*May 18 Order*”) and August 23, 2018). When a municipal lien is placed against the property owner for recovery of the debt, *i.e.*, municipal claim, the property owner must present any defenses to the collection in accordance with the statutory provisions applicable to municipal claims and municipal liens. See 53 P.S. § 7184.² The property owner and/or debtor does not have recourse to any other forum or any other means to strike off the lien or to reduce the indebtedness secured by the lien. Thus, the debtor

² See *Penn Twp. v. Hanover Foods Corp.*, 847 A.2d 219 (Pa. Cmwlth. 2004) – after a municipal claim is filed, three procedural alternatives are available to the parties: (1) the owner may contest the municipal claim or the amount of assessment by filing and serving a notice on the claimant municipality to issue a writ of *scire facias*, thereby forcing a hearing on the municipal claim; (2) the municipality may pursue a writ of *scire facias* without the owner's action; or (3) the owner and the municipality may choose not to do anything, thereby letting the municipal lien remain recorded indefinitely subject to revival of the lien every twenty years upon the issuance of a suggestion of nonpayment and an averment of default.

cannot adjust the amount or have the lien taken off the subject property under any authority possessed by the Commission. *See May 18 Order* at 24.

Based on this clear legal authority, the Commission does not possess the jurisdiction to adjudicate Ms. Collins' claims related to the municipal lien imposed by the Scranton Sewer Authority.

B. To the extent that Ms. Collins is alleging that PAWC terminated her water service in 2001 in violation of the Commission's regulations, such allegations are beyond the three year statute of limitations under 66 Pa. C.S.A. 3314

Ms. Collins testified that she was disputing a water shut-off that occurred in 2001, and that her water was restored approximately one month later. N.T. p. 33. She also made some generalized statements about PAWC's billings to her from the early 2000's. To the extent Ms. Collins is alleging that the PAWC violated the Public Utility Code or the Commission's regulations or Orders, such claims are barred by the statute of limitations at 66 Pa.C.S.A. 3314, which states that "No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part."

Ms. Collins complaint was filed in October of 2017. Therefore, any claims regarding PAWC's actions prior to October of 2014 are barred by the applicable statute of limitations.

C. **Ms. Collins failed to demonstrate that PAWC violated the Public Utility Code or any Commission regulation or Order.**

Section 701 of the Public Utility Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.³ A person seeking affirmative relief from the Commission has the burden of proof.⁴

The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1950); and *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

“Preponderance of the evidence” means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.

Id.

In this case, Ms. Collins has failed to present any evidence that PAWC violated the Public Utility Code or the Commission’s regulations or order. At the hearing in this matter, Ms. Collins’ testimony made it clear that she was attempting to contest some old sewer billings from the Scranton Sewer Authority, and the imposition of a lien on her property by the Scranton Sewer Authority. See N.T. pp. 11-22. She stated that she filed her Complaint against PAWC initially because there was a balance from the Scranton Sewer Authority transferred to her PAWC account, but then acknowledged that this amount was credited off. N.T. pp 10-11. PAWC also confirmed that this amount was credited off, and that Ms. Collins had no overdue balance on her water account. N.T. 71

³ 66 Pa.C.S. § 701.

⁴ 66 Pa.C.S. § 332(a).

and PAWC Exhibit 1. The remainder of Ms. Collins allegations related to alleged old billings by the Scranton Sewer Authority dating back to 2001 or before. While Ms. Collins made some assertions about PAWC being a manager of the Scranton Sewer Company at some point in time, PAWC's witness confirmed that PAWC never issued any bills on behalf of the Scranton Sewer Authority, and never served as a private manager of the Scranton Sewer Authority. N.T. pp. 68-69. PAWC only purchased the assets of the Scranton Sewer Authority effective December 2016, and PAWC did not purchase any liens from the Authority. N.T. p. 71.

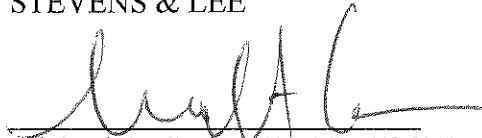
In short, Ms. Collins presented no evidence to support a finding of a violation by PAWC, and accordingly, she failed to meet her burden of proving any violation by PAWC or any entitlement to relief, and therefore her complaint should be dismissed.

III. CONCLUSION

For the foregoing reasons, Pennsylvania American Water Company respectfully requests that the Complaint of Margaret Collins be dismissed.

Respectfully submitted,

STEVENS & LEE



Michael A. Grun, (I.D. No. 78625)
17 N. 2nd St., 16th Fl
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852

COUNSEL FOR PENNSYLVANIA
AMERICAN WATER COMPANY

DATE: September 28, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

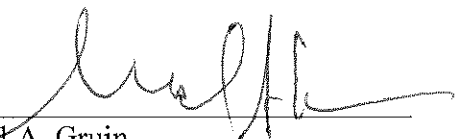
MARGARET COLLINS	:	
Complainant	:	
	:	
v.	:	Docket No. F-2017-2628770
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

VIA CERTIFIED MAIL

Margaret Collins
224 N. Hyde Park Avenue
Scranton, PA 18504



Michael A. Gruin

DATED: September 28, 2018