

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARGARET COLLINS  
COMPLAINANT

F-2017-2628770

v.

PENNSYLVANIA AMERICAN WATER CO. (PAWC)  
RESPONDENT

MAIN BRIEF

SEPTEMBER 25, 2018

MARGARET COLLINS  
224 N. HYDE PARK AVE.  
SCRANTON, PA. 18504  
PH: 570.3431469

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## **1. INTRODUCTION**

**On September 27, 2017, MARGARET COLLINS (COMPLAINANT) filed a formal complaint against PENNSYLVANIA AMERICAN WATER COMPANY (PAWC) or RESPONDENT.**

**On November 1, 2017, Respondent filed an Answer and New Matter.**

**A telephonic hearing was held on July 2, 2018 at 10:00 a.m. (Prior to the hearing, pursuant to the Commission's well-established rule of encouraging settlements, an off-the-record discussion between the parties convened to negotiate this case. PAWC's council stated he did not have the authority to grant Complainant's requested relief). Complainant entered a cover letter dated 6/14/18 (2 pages) with Ex: A, (16 pages); B, (2 pages); C, (8 pages); and D, (4 pages). Respondent entered: Exhibit 1, (3pages) and witness Tawana Dean.**

**ALJ found that based upon the evidence presented, the filing of briefs would likely be beneficial in this proceeding, but not required.**

**PAWC came online (connect date) 9/26/2001 and took over the Scranton Sewer Authority (SSA) in December 2016. American Water \* is the parent company of PAWC. This case involves continued patterns of systemic standard operating procedures that include unfair and deceptive accounting, record keeping, and billing practices that are in violation of the Public Utility Commission's regulations and the Public Utility Code in Chapter 54 and Chapter 56. Standards And Billing Practices For Residential Utility Service. These multiple violations are a result of the use of "manufactured" inconsistent incomplete misleading records, written history reports and invoices listing no proper credit for payments made: triggering cash-for-water exorbitant money demands for water service.**

**\* Thames Water was acquired by German conglomerate RWE AG in January 2003. Rwe acquired American WaterWorks through Thames Water. Thames is the operational manager of RWE's international water business including management of the U.S. properties owned by American Water Works. Thames/RWE is gaining more control of U.S. water and wastewater services by entering an agreement with Operations Management International. RWE/Thames Water - American Water having lost too many battles on water is focused instead on wastewater. <http://www.citizenarchive.org/cnep/Water/general/majorwater/rwe/>**

## **PROPOSED FINDINGS OF FACT**

1. The body of evidence entered in this proceeding in Claimant's Ex: A, B, C, and D speak to this dispute as far back as payments not credited in 1973 through 2014 Ex: D); the history reports show dates from 4/30/04 through 3/24/17 (Ex: A) and the affidavit's disputing payments not being credited date from 7/7/10 sent to SSA and PAWC (Ex: C). Additionally, SSA's 7/16/07 history report states: 4/30/04 balance of \$1,212.65 and on 8/31/04 balance of \$2,361.52 - charging \$1,138.87 interest for four months (Ex: A); and this is the same accounting system that SSA used to generate PAWC'S migration balances (BCS: 3522327) and their 3/24/17 account history report (Ex: A) and PAWC's Exhibit 1.

2. PAWC's conflicting migration balance charges and their 3/24/17 history report (Ex: A) and Exhibit 1, are all grandfathered from prior records provided by SSA as stated by PAWC in the BCS: 3522327 investigation. Claimant has provided ongoing deceptive evidence back before Attorney Shelp's April 3, 2005 letter and continues with PAWC's dishonest deceptive migration balances; the 3/24/17 (Ex: A) history report and Exhibit 1 (PAWC); all of which conflict with the other. Exhibit 1, on 1/12/16 lists a balance of \$16.02 and their 3/24/17 history report on 1/29/16 lists a balance of \$1,220.15 - a difference of \$1,204.13 for the same month and year.

3. PAWC was misleading and provided contrary reports from SSA to BCS investigation. In the Public Utility Commission BCS: 3522327 investigation 8/10/2017 decision; BCS FOUND: 5) that PAWC reported they had SSA records regarding a property lien; and BCS FOUND 6) PAWC reported a 3/24/17 account statement balance (of \$1,336.14). This is contrary to BCS FOUND: 2) PAWC reported they are unable to provide records since they took over SSA. (See Public Utility Commission BCS: 3522327 investigation 8/10/2017.)

4. PAWC provided contrary deceptive reports from SSA to BCS investigation. PAWC claims two migration balances that conflict one with the other for the year 2016. In the Public Utility Commission BCS: 3522327 investigation 8/10/2017 decision BCS FOUND: 6) PAWC's 2016 balance of \$1,336.14 does not corroborate with BCS FOUND: 3) PAWC's 2016 balance of \$325.67: both 3) and 6) PAWC reported for a migration balance for year 2016 only. BCS FOUND: 7) PAWC reported that they only converted charges that were not a year past due the balance possible lien still in negotiation (Did not explain where and how much is in negotiation). AND A MIGRATION BALANCE OF \$1,336.14 AS OF 12/25/16 TO BE CONVERTED TO POSSIBLE LIEN (BCS NO. 3522327- INVESTIGATION BCS FOUND: 7)).

5. PAWC provided unclear, contrary, misleading, deceptive reports from SSA to BCS In the Public Utility Commission BCS: 3522327 investigation 8/10/2017 decision. BCS FOUND: 2) PAWC reported they are unable to provide records since they took over SSA in 2016 and then reported an account statement balance (of \$1,336.14); and another unexplained balance of \$325.67; and then a lien on property (lien is dated 2/11/2000 Claimant's Ex: C). *PAWC got records going back to 2000 (reported to BCS) that PAWC reported they were unable to provide since they took over SSA in 2016 (statements are contradictory).*

6. PAWC's 3/24/17 history report (Claimant's Ex: A) did not give proper credit for \$257.50 paid. Their Exhibit: 1, fails to explain where the balance owed came from and sewer amount payments are missing. PAWC'S 3/24/17 HISTORY REPORT LISTS A BALANCE OF \$1,220.15 ON 1/20/16 AND THAT INCREASED TO \$1,336.14 ON 12/25/16 WITH NO PROPER CREDIT FOR \$257.50 PAYMENTS MADE. AND, PAWC'S MIGRATION CONVERSION CHARGES CONFLICT WITH SSA'S 3/29/16 HISTORY REPORT (Ex: A) OF -0- BALANCE OWED.

7. Claimant's dispute is ongoing with SSA regarding deceptive credit and deposit practices, and fraudulent account billing - 6/10/04 receipt issued "due to fraud" signed B.

**Grey, (Ex: B). PAWC TERMINATED WATER TO CLAIMANT'S PROPERTY ON SEVERAL OCCASIONS DUE TO INCORRECT BILLING AND FAILURE TO CREDIT/DEPOSIT PAYMENTS THAT INCLUDED FRAUD. PAWC's Exhibit: 1, state they came online 9/26/2001. Since that date, Claimant experienced numerous terminations (while balance to PAWC was paid to date) that resulted in exhorbitant cash-for-water payments of \$2,512 that had three different account numbers and that were not credited to Claimant's account (Claimant's Ex: C).**

**8. Attorney Bonni J. Shelp's (Ex: C) April 3, 2005 letter to SSA's Bob Grey speaks to the same egregious billing practices void of proper credit for payments that are the subject of this matter as evidenced in (Ex: A). Her letter also speaks to the unreasonable shut-offs (by PAWC) that while exhoribant payments were made and balance under dispute. Attorney Shelp's June 23, 2006 letter states "sewer authority has kept horrendous records, and employed truly questionable tactics and methods to deal with property owners, and "class action lawsuit," (Ex: C).**

**9. PAWC continues deceptive accounting and billing practices used by SSA. Claimant's 6/14/18 cover letter page 2 and (Ex: A) history reports (and PAWC's 3/24/17 history report); PAWC's Exhibit: 1, and BCS:3522327 investigation all detail history reports and records (from SSA) which state different balances for the same consecutive date across *seven* different history reports and list Claimant under several different account numbers including payment receipts (Claimant's Ex: C, D) that were not credited.**

**10. PAWC continues SSA's patterns of systemic standard operating procedures that include unfair and deceptive accounting, record keeping, and billing practices. Claimant's \$2,512 (Ex: C) payments and (Ex: D) payments were not credited in Claimants history reports, (Ex: A). The same deceptive practice played out in PAWC's 3/24/17 history report listing**

**\$257.50 payments not credited - balance on 12/25/16 of \$1,336.14 does not include credit for \$257.50 payments paid - balance on 1/20/16 is \$1,220.15. PAWC's Exhibit 1; lists amounts that do not appear on their 3/24/17 history report or on Claimant's history report.**

**11. PAWC's testimony, witness testimony and Exhibit 1, on July 2, 2018 did not offer any credible evidence regarding refund due Claimant or what assets PAWC received from the purchase of SSA (liens). No credible evidence has been offered by PAWC in this proceeding. What evidence PAWC did offer: 3/24/17 account history report (Ex: A) and Exhibit 1: both confirm and corroborate Claimant's evidence of unfair systemic patterns of standard operating procedures that include misleading and deceptive accounting, record keeping, and billing practices.**

**12. Claimant has provided a body of evidence in Ex: A, B, C, and D that shows PAWC is responsible for ongoing misleading and deceptive accounting, record keeping, and billing practices and has not explained how the migration balances were calculated or the status of liens they claimed owed. Claimant's evidence is further corroborated by PAWC's "manufactured" 3/24/17 account history report that contradicts their Exhibit 1 and their continued deception by providing dishonest arbitrary misleading reports to the Public Utility Commission BCS: 3522327 investigation as detailed herein: all of which confirm Claimant's evidence and allegations.**

### **PROPOSED CONCLUSION OF LAW**

#### **JURISDICTION**

**13. The Commission has jurisdiction in this matter over PAWC. Respondent is a water distribution utility in this Commonwealth that is within the jurisdiction of the**

Commission subject to the regulatory jurisdiction of the Commission. See Public Utility Code, 66 Pa.C.S. s 102; 52 Pa. Code s 56.2; Chapter 14 of the Public Utility Code (66 Pa.C.S. Chapter 14); and 66 Pa.C.S. s 501.

14. The Public Utility Commission has the “full power and authority” to carry out the intentions of and enforce the Public Utility Code. The Code provides that it shall be the Commission’s duty to enforce, execute and carry out, its regulations, orders, singular or otherwise the provisions to the full intent thereof. See 66 Pa. C.S. s 501(a). Section 501 and of the Public Utility Code gives the Commission broad authority to address and remedy violations of the Public Utility Code and protect the rights of the public. See 66 Pa. C.S. s 501.

15. The Office of Consumer Advocate averred that the Commission has jurisdiction over wastewater services under Section 102 of the Code. See 66 Pa. C.S. s 102.

16. Public Utility Commission Investigation BCS decision concluded that once the sewer charges become part of the customer’s water bill, they become eligible to be addressed by the PUC. See BCS: 3522327.

#### BURDEN OF PROOF

17. The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility should be held responsible or accountable for the problem described in the complaint. *Kiback v. IDT Energy, Inc.*, Docket No.C-2014-2409676, Opinion and Order at 6 (Aug. 20, 2015), citing *Patterson v. The Bell Telephone Co. of PA*, 72 Pa. P.U.C. 196 (1990); see also *Herp v. Respond Power, LLC*, Docket No. C-2014-2413756, Opinion and Order at 3 (Jan. 28, 2016).

18. A complainant has the burden to prove his or her allegations by a “preponderance of the evidence.” 66 Pa. C.S. § 332(a). See also *North American Coal Corp. v.*

Commonwealth of Pa., 2 Pa. Commonwealth 469, 279 A.2d 356 (1971). Proving an allegation by a "preponderance of the evidence" means that one party has presented evidence, which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950) (Se-Ling): Stated further; . . . The burden of proof must be by a preponderance of the evidence, which means when it is weighed there will be a perceptibly greater weight in favor of the plaintiff's proof and more than a mere scintilla. . . . If we visualize evidence as something weighed in an ordinary balance scales and if the evidence plaintiff offers in support of his claim is so much more weighty in probative value than the evidence offered in opposition to it that it tips the scales on the side of the plaintiff, the latter has proved his claim by the fair weight of the evidence . . . . *Se-Ling*, 364 Pa. at 48, 70 A.2d at 855-56.

#### **PAWC's DECEPTIVE OPERATING PATTERNS OF PRACTICE**

19. PAWC failed to utilize good faith, honesty and fair dealing by continuing SSA's patterns to engage in systemic standard operating procedures of unfair and deceptive credit and deposit policies and billing practices in violation of the Commission's regulations and the Public Utility Code for fair and equitable residential public utility service standards governing credit and deposit practices, and account billing; and to utilize good faith, honesty and fair dealing with residential customers. Chapter 56 *Inter alia*, (a) This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and customer complaint procedures.....to insure justice for all concerned. See 52 Pa. Code s 56.1(a); Public Utility Code (66 Pa.C.S.Chapter 14);....Where the documents themselves have a capacity to

deceive and are widely distributed, an unfair and deceptive practice can be established.

*Double Eagle Lubricants, Inc. v. FTC*, 360 F.2d 268, 270 (10th Cir.1965).

20. The Commission has the authority and jurisdiction to hear systemic and widespread business practices that are unjust, unreasonable, inequitable, or otherwise contrary and that violate the Public Utility Code and its regulations. PAWC has continued SSA's unfair billing practices and has not provided a clear and concise itemized bill explaining what they claim is owed from SSA migration balance(s) and other moneys owed in violation of the Public Utility Code and the Commissions regulations to provide uniform fair credit and debit policies. The Commission has the power and authority to prescribe appropriate remedies for such violations. See 52 Pa. Code s 56.1(a), 66 Pa.C.S. Chapter 14; 52 Pa. Code s 54.43(f) (for fraudulent, deceptive or other unlawful marketing acts by employees, agents and representatives); and 66 Pa. C.S. s 501.....When the documents themselves have a capacity to deceive and are widely distributed, an unfair and deceptive practice can be established. *Double Eagle Lubricants, Inc. v. FTC*, 360 F.2d 268, 270 (10th Cir. 1965).

21. PAWC violated the Commissions regulations and Public Utility Code requiring Claimant to be contacted by employee prior to terminations. *Inter alla*: employee, who may be the public utility employee designated to perform the termination, shall attempt to make personal contact with a responsible adult occupant at the resident of the customer. Claimant's residence did not have personal contact with any employee of PAWC as required. See 52 Pa. Code 56.94(1)(Termination prohibited in certain cases. If evidence is presented which indicates that payment has been made); 52 Pa. Code s 56.91(2) (to provide itemized statement of amounts currently due); 52 Pa. Code s 54.43(f) (for fraudulent, deceptive or other unlawful marketing acts by employees, agents and representatives).

22. PAWC conducted terminations in violation of Commissions regulations and Public Utility Code. The Commission's regulations Section 505 instruct SSA to reimburse PAWC *Inter alla*: a public utility for performing termination and reimburse any loss of revenue due to termination. PAWC was complicit with SSA in terminating Claimant's water. PAWC had financial incentive to execute terminations complicit with SSA's orders to terminate water that was based on deceptive account billing practices resulting in exorbitant payments for reconnection; to stop the madness, affidavits were sent. Claimant's \$2,512 reconnection payments far exceeded the Commission's regulations that state: *Inter alla*: "outstanding balance as a condition of restoration cannot exceed 1/12 of the outstanding balance" for reconnection fees." See 52 Pa. Code s 56.191(2)(iii); 52 PA. Code s 54.43(f) (for fraudulent, deceptive or other unlawful marketing acts by employees, agents and representatives). See 52 Pa. Code s 56.1(a); s 56.15; Public Utility Code, 66 Pa.C.S. s 501; and 52 Pa. Code s 54.43(f)

23. PAWC failed to utilize good faith, honesty and fair dealing by continuing SSA's patterns to engage in systemic standard operating procedures of unfair and deceptive misleading accounting, record keeping, and billing practices and apply improper credit for payments in violation of the Commission's regulations and the Public Utility Code for fair and equitable residential public utility service standards governing credit and deposit practices, and account billing; and to utilize good faith, honesty and fair dealing with residential customers. Chapter 56 *Inter alla*, (a) This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and customer complaint procedures.....to insure justice for all concerned. See 52 Pa. Code s 56.1(a); Public Utility Code (66 Pa.C.S. Chapter 14);.....Where the documents themselves have a capacity to deceive and are widely

**distributed, an unfair and deceptive practice can be established. *Double Eagle Lubricants, Inc.v. FTC.* 360 F.2d 268, 270 (10th Cir.1965).**

**24. PAWC violated the Commissions regulations and Public Utility Code for reporting deceptive, misleading, and arbitrary inconsistent, incomplete information to the Public Utility Commission Bureau Of Consumer Services investigation. See 52 Pa. Code s 54.43(f)(for fraudulent, deceptive or other unlawful marketing acts by employees, agents and representatives); 66 Pa. C.S. s 501 and 66 Pa. C.S. s 501(a).**

**25. The Commission's regulations require compliance with the Consumer Protection Law to restore to any person in interest any moneys or property. More than 30,000 PAWC customers received migration balances from the sale of SSA to PAWC and all were derived from the same dishonest, deceptive credit and deposit and account billing practices evidenced by the documents forwarded in this matter; and corroborated by the Commission's BCS: 3522327 investigation and PAWC's Exhibit: 1; whereby PAWC's exhibits and reports are deceptive, arbitrary and not credible.See 77 P.S. s 201-4.1; 52 Pa. Code s 54.43(f)(for fraudulent, deceptive or other unlawful marketing acts by employees, agents and representatives); 111.12(d)(1)(relating to compliance with the Consumer Protection Law), .....*Where the documents themselves have a capacity to deceive and are widely distributed, an unfair and deceptive practice can be established. Double Eagle Lubricants, Inc.v. FTC, 360 F.2d 268, 270 (10th Cir.1965).***

#### **APPLICABLE STATUE OF LIMITATIONS**

**26. The Commission has the authority and jurisdiction to refund charges more than four years to the date of this complaint. The 4-year limit does not apply in instances of fraud and theft. The 6/10/04 receipt marked fraud by SSA and the PAWC water terminations resulted in exhorbitant cash-for-water payments referenced in Attorney Shelp's April 7, 2005 letter while a billing dispute was under negotiation Ex: C). PAWC continued SSA's deceptigve accounting**

system by reporting to BCS that their records were from SSA including their 3/24/17 account history report - from the same SSA accounting system that generated Claimant's deceptive history reports. See 52 Pa. Code s 54.43(f) (for fraudulent, deceptive or other unlawful marketing acts by employees, agents and representatives); 52 Pa.Code s 56.191(4-year limit does not apply in instances of fraud and theft) and 66 Pa. C.S. s 501.

*Where the documents themselves have a capacity to deceive and are widely distributed, an unfair and deceptive practice can be established. Double Eagle Lubricants, Inc.v. FTC, 360 F.2d 268, 270 (10th Cir.1965).*

### PROPOSED ORDERING PARAGRAPHS

**CLAIMANT REQUESTS THE COMMISSION GRANT RELIEF AS FOLLOWS:**

1. TO ORDER PENNSYLVANIA AMERICAN WATER COMPANY TO SHOW HOW MIGRATION/CONVERSION BALANCES FROM THE SCRANTON SEWER AUTHORITY OF \$325.67 AND \$1,283.62 WERE COMPUTED BY PROVIDING A CLEAR AND COMPLETE HISTORY REPORT BACK TO 1978; AND,
2. TO REMOVE AND SATISFY ANY LIENS ON CLAIMANT'S PROPERTY OR REIMBURSE WITH INTEREST.
3. TO REIMBURSE \$3,487.79 PAYMENTS WITH INTEREST HEREIN AND ALL OTHER MONIES THAT WERE NOT CREDITED OR DEPOSITED TO CLAIMANT'S ACCOUNT PER CH. 56 STANDARDS AND BILLING PRACTICES 52 S 56.57 INTEREST RATE (P.L. 13, NO.6) (41 P.S. S 202); and S 56.58 STATES INTEREST SHALL BE PAID TO THE CUSTOMER and PUBLIC UTILITY CODE 66 PA. C.S. CH. 14 and CH. 56 S 56.181 DIRECTS DUTY TO PAY INTEREST TO THE CUSTOMER WHENEVER OVERPAYMENT IS FOUND (1) AT THE TARIFF RATE FILED UNDER S 56.22 AT AMOUNT DETERMINED BY THE PARTIES OR THE COMMISSION.
4. TO GRANT ANY OTHER RELIEF AVAILABLE TO CLAIMANT AS APPLIES BUT NOT LIMITED TO PENNSYLVANIA PUBLIC UTILITY COMMISSION STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL SERVICE AND ALL PUBLIC UTILITY CODES FOR INTEREST CHARGED.
5. TO IMPOSE ANY ACTION(S) AND PENALTIES AS THE PUC FINDS NECESSARY ON PAWC AND OR SSA.

RESPECTFULLY,



PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARGARET COLLINS, COMPLAINANT

DOCKET NO. F-2017-2628770

v.

PENNSYLVANIA AMERICAN WATER COMPANY, RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING ANSWER UPON THE PARTY LISTED BELOW IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA. CODE & 1.54 RELATING TO SERVICE BY A PARTY.

MAILED AND ELECTRONIC TO:

JEFFREY A WATSON, ALJ  
PENNSYLVANIA UTILITY SOMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGE  
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*Margaret Collins*  
9-25-18

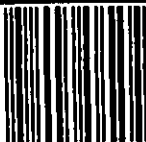
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