

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Koree Shedlock	:	
	:	
v.	:	C-2022-3033747
	:	
Pennsylvania American Water Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Koree Shedlock against Pennsylvania-American Water Company due to Complainant’s failure to meet her burden of proof that the Company violated a statute, regulation, order, or tariff provision.

HISTORY OF THE PROCEEDING

On July 14, 2022, Koree Shedlock (Complainant or Ms. Shedlock) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company¹ (Company, Respondent, or PAWC), alleging that she was having reliability, safety, or quality problems with her water service at her residence at 19 Columbia Road, Monongahela, PA (service location or 19 Columbia Road). Specifically, she averred that she had been dealing with water main breaks in her yard, driveway, pool, and home since she inherited the house in 2019. She claimed there were “many leaks” in 2019 that were fixed, resulting in her having to “remodel and gut” her house, while the utility only graded and

¹ Ms. Shedlock incorrectly identified her water utility as “American Water” in her Formal Complaint.

retraced her driveway. She avers there was another leak in 2021, which resulted in her having to do another “remodel on the interior of [her] house” and again regrade her driveway. She avers the 2021 leak caused damage to her pool and driveway. As relief, Complainant requested the water utility be made to “recognize they were at fault for everything since [she] got the home in 2019.” Complainant also requested a settlement amount in regard to “pain and suffering during both remodels, during pregnancy, labor of work, materials” and reimbursement for “every penny and amount of time taken” to deal with the leaks.

On August 2, 2022, the Company filed an Answer to the Complaint. PAWC admits it had main breaks in the general vicinity of Complainant’s home in 2019, but averred those leaks were repaired. PAWC averred it tested water on Complainant’s property in 2019 to determine if the water was coming from the Company’s mains, and determined the water in question was not. PAWC denied that the breaks in 2019 caused damage to Complainant’s property. PAWC averred that in 2021, it again tested water on Complainant’s property and determined that the water was not from the Company’s mains.

By notice dated September 12, 2022, this case was assigned to Administrative Law Judge Emily I. DeVoe (ALJ DeVoe), and an evidentiary hearing was scheduled for October 19, 2022. On September 12, 2022, a Prehearing Order was issued.

The evidentiary hearing convened as scheduled on October 19, 2022. Complainant’s fiancé, Jesse Weaver, appeared on behalf of Complainant, and attorney Michael Gruin, Esq., was present on behalf of Respondent. Mr. Weaver is not an attorney and requested he be permitted to present Ms. Shedlock’s case on her behalf as she had a work commitment.² ALJ DeVoe exercised her discretion and continued the hearing.³ Ms. Shedlock joined the conference for a short time and, after consulting with the parties regarding their availability, ALJ DeVoe gave oral notice that the hearing would be rescheduled for November 2, 2022.⁴

² Tr. 5.

³ Tr. 9.

⁴ Tr. 8-10.

The evidentiary hearing convened as scheduled on November 2, 2022.

Ms. Shedlock was present and represented herself. She presented the testimony of Mr. Weaver, her fiancé, and Complainant's Exhibits 1-16 were admitted into evidence. Mr. Gruin was again present on behalf of the Company. He presented the testimony of Justin Nash, Senior Supervisor of Field Operations, and PWSA Exhibit 1 was admitted into the record. During the hearing, ALJ DeVoe requested the Company submit additional records.

The Company submitted the additional documents to ALJ DeVoe by email on November 8, 2022. Upon review of the documents, ALJ DeVoe determined a second day of hearing was necessary. After consulting with the parties via email, a second day of hearing was scheduled for December 1, 2022.

The second day of hearing convened as scheduled on December 1, 2022.

Ms. Shedlock was present and represented herself. Mr. Gruin was again present on behalf of the Company. He presented the testimony of Nancy Smeltz, Senior Compliance Specialist, and PWSA Exhibits 2-3 were admitted into the record.

The transcript for the first day of hearing was filed December 23, 2023, and the transcript for the second day of hearing was filed January 4, 2023. Exhibits for the first day of hearing were filed on April 25, 2023.

On April 17, 2023, ALJ DeVoe issued an Interim Order closing the evidentiary record.

On June 28, 2023, a Judge Change Notice was served on both parties reassigning this case to me.

The matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainant is Koree Shedlock and she resides at 19 Columbia Road, Monongahela, PA.
2. Respondent is Pennsylvania-American Water Company, a jurisdictional public utility.
3. On July 14, 2022, Complainant filed a Complaint with the Commission against Respondent, alleging unreasonable service due to repeated, frequent breaks on the water main serving 19 Columbia Road.
4. On August 2, 2022, the Company filed an Answer to the Complaint, essentially denying the material averments in the Complaint.
5. Mr. Weaver owns property located at 10 Elm Street, Brownsville, PA.⁵
6. PAWC provides water service to the Elm Street property, as well as the Columbia Road property.⁶
7. Ms. Shedlock moved into 19 Columbia Road in 2019, when she inherited the property.⁷
8. Nineteen Columbia Road is served by a 50-60-year-old, 2-inch water main along Cypress Avenue (Cypress main).⁸
9. The Cypress main serves seven houses, including Complainant's house.⁹

⁵ Tr. 117.

⁶ Tr. 115.

⁷ Tr. 79.

⁸ Tr. 75, 89-90.

10. Nineteen Columbia Road sits downhill and behind Cypress Avenue and is served by a 150-foot service line running downhill through the woods.¹⁰

11. The property at 19 Columbia Road is at a slant, slanting downhill toward the house.¹¹

12. The house at 19 Columbia Road sits at the end of a long gravel driveway.¹²

13. The house at 19 Columbia Road is “in-line gravity-wise” to accept most of the water coming down through the hill.¹³

14. In 2019, the Cypress main sprung a leak (2019 leak), causing water to flow through the hillside and pool onto the driveway at 19 Columbia Road.¹⁴

15. After receiving a call about the 2019 leak, PAWC sent a representative to the property to test the water.¹⁵

16. The initial test indicated the water was not water from the Cypress main, but after water continued to leak, PAWC went back out to the property and “sounded” the main.¹⁶

⁹ Tr. 90.

¹⁰ Tr. 75, 90.

¹¹ Tr. 37-38; Complainant Exhibits 1-13.

¹² Complainant Exhibits 1-13.

¹³ Tr. 37-38.

¹⁴ Tr. 39.

¹⁵ Tr. 91.

¹⁶ Tr. 91.

17. When there is a leak on the main, it makes a sound which can be heard by PAWC's specialized listening devices.¹⁷

18. The pitch of the sound indicates the size of a leak.¹⁸

19. A small leak results in a high-pitched noise, and a larger leak results in a deep-pitched noise.¹⁹

20. After sounding the main²⁰, PAWC determined there was noise on the line, so PAWC dug up the main, found the leak, and repaired it on October 3, 2019.²¹

21. The 2019 leak was not a large leak, and was considered a "crack around," which is when a crack forms around the pipe and water seeps out.²²

22. The leaking water from the 2019 leak was non-surfacing along the main but was surfacing down on Complainant's property.²³

23. Mr. Nash explained that PAWC re-stoned and re-graded Complainant's entire driveway as a result of the 2019 leak.²⁴

¹⁷ Tr. 95.

¹⁸ Tr. 95.

¹⁹ Tr. 95.

²⁰ PAWC checks for leaks on a water main by "sounding" it. Tr. 95. When there is a leak on the main, it makes a sound which can be heard by PAWC's specialized listening devices. Tr. 95. The pitch of the sound indicates the size of a leak. Tr. 95. A small leak results in a high-pitched noise, and a larger leak results in a deep-pitched noise. Tr. 95.

²¹ Tr. 91-92.

²² Tr. 91.

²³ Tr. 92-93.

²⁴ Tr. 39, 88, 93.

24. Complainant's driveway subsequently dried up.²⁵

25. In mid-2020, Mr. Weaver, Complainant's fiancé, moved into 19 Columbia Road.²⁶

26. In 2021, Complainant and Mr. Weaver decided to renovate the house.²⁷

27. During renovations, Mr. Weaver discovered a significant amount of water in the house's basement and crawl space.²⁸

28. Mr. Weaver installed a pump to help drain all the water from the house.²⁹

29. At the time, Complainant and Mr. Weaver believed the water in the house was due to a groundwater drainage problem.³⁰

30. Mr. Weaver and Complainant did not hire an engineer or other expert to determine where the water was coming from.³¹

31. On July 31, 2021, during excavation on the property, contractors hired by Complainant and Mr. Weaver hit the water service line and Complainant called PAWC to request the water be turned off so repairs could be made.³²

²⁵ Tr. 39, 92.

²⁶ Tr. 30, 40.

²⁷ Tr. 43.

²⁸ Tr. 43; Complainant Exhibits 13-14.

²⁹ Tr. 69-71; Complainant Exhibits 13-14.

³⁰ Tr. 77.

³¹ Tr. 77-78.

³² Tr. 93, 107-108, 131.

32. On August 5, 2021, Complainant called PAWC to report that repairs had been made and request that service be restored.³³

33. The calls on July 31, 2021, and August 5, 2021, were the only calls PAWC received in 2021 regarding service issues or potential leaks at 19 Columbia Road.³⁴

34. On or about March 1, 2022, Complainant and Mr. Weaver observed water flowing and pooling into the property.³⁵

35. On May 17, 2022, Mr. Weaver again observed water flowing and pooling onto the property.³⁶

36. Mr. Weaver installed a pump about two feet deep by the pool on the property to deter water away from the house so he would not have to dig a ditch all the way around the house.³⁷

37. The pump was set up to pump water over the hill to keep it away from the house.³⁸

38. On or about May 17, 2022, Mr. Weaver contacted PAWC regarding a possible leak.³⁹

³³ Tr. 112, 134-135.

³⁴ Tr. 111-112.

³⁵ Complainant Exhibits 1-11.

³⁶ Tr. 32, Tr. 67-68.

³⁷ Tr. 68.

³⁸ Tr. 68.

³⁹ Tr. 104.

39. The contact on or about May 17, 2022, was the first contact Mr. Weaver had with PAWC in 2022.⁴⁰

40. Instead of sampling the water, PAWC immediately dispatched leak protection personnel to the service location.⁴¹

41. PAWC sounded the main and determined there was a leak.⁴²

42. The leak was repaired on May 17, 2022, and, at that time, most of the water on the property had dried up.⁴³

43. PAWC personnel were last at Complainant's property in June 2022, and at that time, the main was quiet, indicating no leaks.⁴⁴

44. Mr. Weaver removed the pump sometime in July 2022 because he no longer needed it.⁴⁵

45. Water mains leak all the time for a variety of reasons, including the freezing and thawing of the ground, contractor hits, and pressure surges.⁴⁶

46. When the Cypress main was initially installed, it was common practice to use cast iron pipes, which typically do not last longer than 40 or 50 years.⁴⁷

⁴⁰ Tr. 104.

⁴¹ Tr. 96.

⁴² Tr. 96.

⁴³ Tr. 33.

⁴⁴ Tr. 100.

⁴⁵ Tr. 69.

⁴⁶ Tr. 97.

⁴⁷ Tr. 97.

47. The Cypress main was scheduled to be replaced by the end of 2022, and PAWC planned to install a high density polyurethane pipe (HDPE) or a liner.⁴⁸

48. Complainant's house is at the bottom of a hill, and between groundwater, drainage from the houses above Complainant's property, possible downspout, etc., there are other possible sources of water on the property.⁴⁹

49. There is at least one property uphill from Complainant's property that has a French drain, which could lead to water running downhill onto Complainant's property.⁵⁰

DISCUSSION

Complainant alleges that she is having service issues at her residence, specifically that the Cypress main has had repeated breaks, resulting in damage to the property.

Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.

⁴⁸ Tr. 98.

⁴⁹ Tr. 99-100.

⁵⁰ Tr. 100.

Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001). Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. §§ 102 and 1501. A public utility is not required to provide perfect service. *Williams v. Verizon Pa., LLC*, Docket No. C-2018-3005368 (Final Order entered August 23, 2019).

Complainant's Position

Ms. Shedlock presented the testimony of Mr. Weaver, her fiancé. Mr. Weaver alleged PAWC knew there was water on the property coming down the hill from Cypress Avenue and failed to properly investigate the source of the water.⁵¹ Mr. Weaver alleged there were multiple leaks on the Cypress main over the years, and PAWC continually denied it was their water leaking onto the property.⁵²

Mr. Weaver testified PAWC satisfactorily fixed the 2019 leak and re-graded Complainant's driveway.⁵³ He testified water began pooling on the property again in early 2021.⁵⁴ He testified he dug a hole to try to see where the water was coming from, but he was unable to do so.⁵⁵ He provided inconsistent and vague testimony about contacts he alleged he had with PAWC in 2021.⁵⁶

⁵¹ Tr. 30-31.

⁵² Tr. 30-32.

⁵³ Tr. 39.

⁵⁴ Tr. 39, 41-42.

⁵⁵ Tr. 32.

⁵⁶ Tr. 40, 77.

Mr. Weaver and Complainant subsequently decided to renovate the house, and during their demolition, on or about July 2021, they discovered a significant amount of water inside their basement.⁵⁷ Mr. Weaver opined that water had been leaking into the house for quite some time because the floor had started getting soft.⁵⁸ It was only after he ripped up the floor that he and Complainant realized exactly how much water was inside the house.⁵⁹ Mr. Weaver took video of the crawl space under the floor where the water pooled and needed to be pumped out.⁶⁰ Mr. Weaver testified he and Complainant believed they had a groundwater drainage problem and did not hire an engineer or other expert to determine where the water was coming from.⁶¹

Mr. Weaver opined all this water was due to a leak from the Cypress main. As a result, he and Complainant excavated around the property and re-graded the entire property to keep water out of the house.⁶² Mr. Weaver admitted he and Complainant did not call PAWC about the water issue in 2021 until later in the year.⁶³

He testified Complainant called PAWC by end of August 2021 to report the water in their basement, but could not recall the exact date,⁶⁴ but later speculated it was July or August.⁶⁵ He testified it took several calls over several months to get someone from the Company to come out to the property to investigate.⁶⁶ He testified that in September or

⁵⁷ Tr. 43.

⁵⁸ Tr. 43.

⁵⁹ Tr. 43.

⁶⁰ Tr. 69-71; Complainant Exhibits 13-14.

⁶¹ Tr. 77, 77-78.

⁶² Tr. 34.

⁶³ Tr. 80-81.

⁶⁴ Tr. 44-45.

⁶⁵ Tr. 109.

⁶⁶ Tr. 45-46.

November 2021, someone did come out to test the water in the driveway, but never got back to them.⁶⁷

Mr. Weaver testified he “took over” dealing with PAWC in early 2022, since Complainant had been dealing with them prior to that.⁶⁸ Mr. Weaver testified it took “daily calls” by him to PAWC to get PAWC to continue to investigate the water leak.⁶⁹ Mr. Weaver provided inconsistent testimony regarding his contact and communication with PAWC in 2021. First, he testified PAWC took samples three or four times since he began dealing with PAWC in early 2022.⁷⁰ Then he testified it was just once.⁷¹ Mr. Weaver testified he spoke to the employees who came out to take the samples, and they all said it was not PAWC water on the property.⁷²

Mr. Weaver testified he continued to call PAWC throughout late 2021, and PAWC came out to take a water sample and inspect the line in February 2022.⁷³ He further testified the Company came out to the property on or about late March 2022, or April 2022, or early May 2022 due to issues with the main on Cypress.⁷⁴ He took multiple pictures, as well as a video, of water flowing onto and pooling on the property on March 1, 2022.⁷⁵ Mr. Weaver testified the first time he reported a possible leak to PAWC in 2022 was in May.⁷⁶ There were two run-down, vacant properties along Cypress Avenue that had taps running to them, that were still open and

⁶⁷ Tr. 46-47, 103.

⁶⁸ Tr. 47-48.

⁶⁹ Tr. 49, 50.

⁷⁰ Tr. 49, 50.

⁷¹ Tr. 104, 105.

⁷² Tr. 50-51.

⁷³ Tr. 105, 106.

⁷⁴ Tr. 56-57, 105.

⁷⁵ Complainant Exhibits 1-11.

⁷⁶ Tr. 104.

flowing into the ground.⁷⁷ PAWC capped off the lines and informed him that it would be a couple weeks for the water that had soaked into the ground to run out and dry out.⁷⁸ About a month after that, Mr. Weaver testified he called again to report a leak, and PAWC determined that at the end of the line, where they installed a three-foot patch, it was still profusely leaking, plus there were additional leaks discovered.⁷⁹ Mr. Weaver testified that PAWC capped off the line a second time and fixed the leaks.⁸⁰

Mr. Weaver testified there was a significant amount of water pooling on the property on May 17, 2022, and he dug a hole to try to keep the water from coming down the driveway towards the house since he and Complainant had just finished remodeling their house due to significant water damage.⁸¹ Mr. Weaver testified Complainant took a video of the water flowing through and pooling on the property.⁸² The video depicts a pump Mr. Weaver installed about two feet deep by the pool to deter water away from the house so he would not have to dig a ditch all the way around the house.⁸³ The pump was set up to pump water over the hill to keep it away from the house.⁸⁴ Mr. Weaver explained PAWC fixed the leak in May 2022, and “there’s absolutely no more water” since the repairs were made.⁸⁵ He later testified there is still a small amount of water leakage due to the fact PAWC has not yet replaced the main line, but about 95% of the water that had been pooling on the property is gone.⁸⁶ He removed the pump sometime in

⁷⁷ Tr. 52.
⁷⁸ Tr. 52.
⁷⁹ Tr. 52, 57.
⁸⁰ Tr. 52-53.
⁸¹ Tr. 32.
⁸² Tr. 67-68.
⁸³ Tr. 68.
⁸⁴ Tr. 68.
⁸⁵ Tr. 33.
⁸⁶ Tr. 51.

July 2022 because he no longer needed it.⁸⁷ There is no more water running through the driveway, there are no more massive puddles around the pool area.⁸⁸ He and Complainant can park in the driveway and their children can play there.⁸⁹ Mr. Weaver explained, “everything is basically dried up.”⁹⁰ Complainant submitted a picture and video of how her driveway looked on October 14, 2022, and Mr. Weaver testified that that was how the driveway currently looks.⁹¹

Mr. Weaver testified that it is obvious that the water pooling on their property and entering their house was leaking from the main on Cypress.⁹² He alleged there were 8 gallons of water per minute flowing through the trench he dug to try to keep water away from the house, according to his calculations, there were upwards of 80 million gallons of water that flowed onto his property.⁹³ He testified there is “always plenty of rain water and groundwater,” but there is no possible way that so much water was due solely to those sources.⁹⁴

Mr. Weaver testified the subject property sits downhill from Cypress Avenue, and the house is “in-line gravity-wise” to accept most of the water coming down through the hill.⁹⁵

Mr. Weaver argued that while PAWC has plans to replace the whole main on Cypress, that main should have been replaced several years ago.⁹⁶ He admits PAWC has since fixed the leaks on the main to his satisfaction, and the leaks are largely resolved, but PAWC has

⁸⁷ Tr. 69.
⁸⁸ Tr. 51.
⁸⁹ Tr. 51.
⁹⁰ Tr. 51.
⁹¹ Exhibit 15.
⁹² Tr. 35.
⁹³ Tr. 35.
⁹⁴ Tr. 37.
⁹⁵ Tr. 37-38.
⁹⁶ Tr. 33.

not “made it right” by paying damages for the destruction to the property, plus, he believes the Company should be held accountable for determining the amount of water lost due to the leaks.⁹⁷

PAWC’s Position

The Company presented witness testimony and exhibits to refute Complainant’s testimony.

PAWC’s Senior Supervisor of Field Operations, Mr. Justin Nash, explained that Complainant’s property is attached to a 50–60-year-old, 2-inch main that is located on Cypress Street.⁹⁸ The water main serves seven houses, including Complainant’s house, which is located approximately 150 feet from the main.⁹⁹ Mr. Nash testified that the main on Cypress Street sits up above Complainant’s driveway, and he estimates that it is downhill from the water main.¹⁰⁰

Mr. Nash testified that he supervised and personally investigated issues related to the main line leaks near Complainant’s property.¹⁰¹ After receiving a call about the 2019 leak, Mr. Nash testified PAWC sent a representative to the property to test the water.¹⁰² The initial test indicated the water was not water from the main, but after water continued to leak, PAWC went back out to the property and sounded the main.¹⁰³ After sounding the main, PAWC determined there was noise on the line, so PAWC dug up the main, found the leak, and repaired it on October 3, 2019.¹⁰⁴ The 2019 leak was not a large leak, and was considered a “crack

⁹⁷ Tr. 60.
⁹⁸ Tr. 89-90.
⁹⁹ Tr. 90.
¹⁰⁰ Tr. 91.
¹⁰¹ Tr. 87.
¹⁰² Tr. 91.
¹⁰³ Tr. 91.
¹⁰⁴ Tr. 91-92.

around,” which is when a crack forms around the pipe and water seeps out.¹⁰⁵ Mr. Nash testified that the leaking water was non-surfacing along the main, but was surfacing down on Complainant’s property.¹⁰⁶ Mr. Nash explained that PAWC re-stoned Complainant’s entire driveway as a result of the 2019 leak.¹⁰⁷

Mr. Nash testified that there was a report of a service line leak at the service location on July 31, 2021.¹⁰⁸ Mr. Nash testified that Complainant was doing some digging on her property and hit her side of the service line.¹⁰⁹ Complainant called to request PAWC turn off the water so repairs could be made.¹¹⁰ PAWC received a call on August 5, 2021, to turn the water back on.¹¹¹ PAWC’s records indicate that, except for the call on July 31, 2021, reporting the customer hit to the service line, neither Complainant nor Mr. Weaver called to report any leaks in 2021.¹¹²

Mr. Nash confirmed that there were no reports of the Cypress Main leaking in 2021, but there was a leak in May 2022.¹¹³ Mr. Nash testified that Complainant called on May 10, 2022, to report the leak, and PAWC sent a representative to the service location that day to take a water sample.¹¹⁴ The test came back as not water from the main, but water continued to leak onto Complainant’s property.¹¹⁵ PAWC received a second call and went back out to the

¹⁰⁵ Tr. 91.
¹⁰⁶ Tr. 92-93.
¹⁰⁷ Tr. 88, 93.
¹⁰⁸ Tr. 93.
¹⁰⁹ Tr. 93.
¹¹⁰ Tr. 93.
¹¹¹ Tr. 112.
¹¹² Tr. 112.
¹¹³ Tr. 93-94.
¹¹⁴ Tr. 94-95.
¹¹⁵ Tr. 94-95.

property and sounded the main.¹¹⁶ Mr. Nash testified that once PAWC representatives heard a high-pitched sound on the main, indicating a small leak, they made plans to repair the leak.¹¹⁷ Mr. Nash testified he went out to the property in May 2022 approximately 3 to 5 times.¹¹⁸ Repairs were made on May 13, 2022.¹¹⁹ After repairs were made, Mr. Nash testified he had leak protection personnel sound the main again, and the main was quiet.¹²⁰

Shortly thereafter, Mr. Weaver contacted Mr. Nash and reported water on the property again.¹²¹ Instead of sampling the water, Mr. Nash immediately dispatched leak protection personnel to the service location.¹²² They sounded the main and determined there was a leak.¹²³ This leak was repaired on May 17, 2022.

After PAWC repaired the leak on May 17, 2022, water was still flowing onto Complainant's property.¹²⁴

Mr. Nash testified that water mains leak all the time for a variety of reasons.¹²⁵ Freezing and thawing of the ground, contractor hits, and pressure surges can all result in water main leaks.¹²⁶ Mr. Nash explained that when the Cypress Main was initially installed, it was

¹¹⁶ Tr. 94-95.

¹¹⁷ Tr. 95.

¹¹⁸ Tr. 87-88.

¹¹⁹ Tr. 95.

¹²⁰ Tr. 96.

¹²¹ Tr. 96.

¹²² Tr. 96.

¹²³ Tr. 96.

¹²⁴ Tr. 96.

¹²⁵ Tr. 97.

¹²⁶ Tr. 97.

common practice to use cast iron, which, over time, does not last longer than 40 or 50 years.¹²⁷ Mr. Nash testified the Cypress main was scheduled to be replaced by the end of 2022, and PAWC would install a high density polyurethane pipe (HDPE) or PAWC would install a liner.¹²⁸

In response to Mr. Weaver’s testimony that 80 million gallons leaked onto Complainant’s property, Mr. Nash testified that this is an “extremely high” estimate.¹²⁹ Mr. Nash explained that even if the leak was continuously leaking 8 gallons a minute onto the property, over the course of an entire year, that would be 4 million gallons of water.¹³⁰ Over the course of two years, that would still only be 8 million gallons, and not 80 million gallons.¹³¹

Mr. Nash opined that the main was not leaking continually for a year or more.¹³² Mr. Nash explained that if it had, there would have been significantly more damage, and the water would have continued to flow consistently onto Complainant’s property, and would not have stopped after PAWC made repairs.¹³³ Mr. Nash testified that Complainant’s house is at the bottom of a hill, and between groundwater, drainage from the houses above Complainant’s property, possible downspout, etc., there are other possible sources of water on the property.¹³⁴ Specifically, Mr. Nash testified he knows of at least one property uphill from Complainant’s property that has a French drain, which could lead to water running downhill onto Complainant’s property.¹³⁵

¹²⁷ Tr. 97.
¹²⁸ Tr. 98.
¹²⁹ Tr. 98-99.
¹³⁰ Tr. 98-99.
¹³¹ Tr. 98-99.
¹³² Tr. 99.
¹³³ Tr. 99.
¹³⁴ Tr. 99-100.
¹³⁵ Tr. 100.

Mr. Nash testified that PAWC personnel were last at Complainant's property in June 2022, and at that time, the main was quiet, indicating no leaks.¹³⁶

In response to Mr. Weaver's testimony that Mr. Weaver contacted PAWC multiple times throughout 2021 to report a water main leak, Mr. Nash testified he personally reviewed the Company's records associated with the service location.¹³⁷ He testified that PAWC's records indicate that, except for the call on July 31, 2021, reporting the customer hit to the service line, neither Complainant nor Mr. Weaver called to report any leaks in 2021.¹³⁸ Mr. Nash testified Mr. Weaver contacted him by text message and phone call beginning in May 2022, but did not contact him prior to that in 2021.¹³⁹ Mr. Nash testified there is no record of Mr. Weaver or Complainant calling the PAWC field office any time in 2021,¹⁴⁰ and the only record of them calling the Company's service center was on July 31, 2021 to report the line hit and on August 5, 2021, to request the water be turned back on.¹⁴¹

Ms. Shedlock explained that Mr. Nash owns property at 10 Elm Street, Brownsville, that is also served by PAWC, and opined that when he allegedly called PAWC in 2021, regarding alleged leaks at 19 Columbia Road, the calls were being entered as being related to 10 Elm Street, instead.¹⁴²

On the second day of testimony, PAWC presented the testimony of Nancy Smeltz, Senior Compliance Analyst. Ms. Smeltz testified that PAWC's records system does not allow representatives to print information from the system; the employees must copy each record and paste it into a Word document, showing what happened, who called, what time of day it is, and

¹³⁶ Tr. 100.

¹³⁷ Tr. 111.

¹³⁸ Tr. 112.

¹³⁹ Tr. 111-112.

¹⁴⁰ Tr. 112.

¹⁴¹ Tr. 112.

¹⁴² Tr. 113.

everything that occurred during the call.¹⁴³ Ms. Smeltz testified she reviewed the call records pertaining to 19 Columbia Road from January 1, 2021, through October 31, 2022.¹⁴⁴ She testified the first time PAWC received a call regarding 19 Columbia Road in 2021, was on July 31, 2021.¹⁴⁵ The next call was on August 5, 2021, requesting service be restored.¹⁴⁶

The only contacts for 10 Elm Street were in regard to Mr. Weaver starting service and making an online payment.¹⁴⁷

Analysis and Conclusion

The proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). In this case, based upon the evidence, Complainant must prove PAWC failed to provide adequate, efficient, safe, and reasonable service regarding the reported water main leaks in 2019 and 2022 to prevail. 66 Pa.C.S. §§ 102 and 1501.

The undersigned finds that the evidence presented does not establish that Complainant or Mr. Weaver reported a suspected water main leak in 2021. I find that the only customer contacts regarding water service and leak issues in 2021 occurred on July 31, 2021 and August 5, 2021. Mr. Nash testified credibly that there was a report of a service line leak at the service location on July 31, 2021.¹⁴⁸ Mr. Nash testified credibly that Complainant was doing some digging on her property and hit her side of the service line.¹⁴⁹ Complainant called to request

¹⁴³ Tr. 130.

¹⁴⁴ Tr. 130-132.

¹⁴⁵ Tr. 131.

¹⁴⁶ Tr. 134-135.

¹⁴⁷ Tr. 138-139.

¹⁴⁸ Tr. 93.

¹⁴⁹ Tr. 93.

PAWC turn off the water so repairs could be made.¹⁵⁰ PAWC received a call on August 5, 2021, to turn the water back on.¹⁵¹

Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ. 66 Pa.C.S. § 1505.

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984). Further, the Commission has stated that a utility is not mandated to furnish perfect service. “Service” is defined in Section 102 of the Code as follows:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities,...in the performance of their duties under this part to their patrons, employees, other public utilities, and the public,...^[152]

Section 1501 does not mandate perfect service nor must a public utility provide the best possible service. “Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.” *Re Metropolitan Edison Co.*, 80 Pa.P.U.C. 663, 672 (1993).

¹⁵⁰ Tr. 93.

¹⁵¹ Tr. 112.

¹⁵² 66 Pa.C.S. §102

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness. *Thurby v. West Penn Power Co.*, Docket No. C-2011-2254048 (Order entered Apr. 4, 2013); *Bertsch v. PPL Elec. Utils. Corp.*, Docket No. C-2011-2251784 (Final Order entered Apr. 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket Nos. C-2008-2061244, C-2008-2068818 (Order entered Jan. 28, 2010).

After reviewing the evidence, the undersigned finds Complainant failed to meet her burden of proving that the Company violated the Code, a Commission regulation, a Commission order, or a PAWC tariff provision with respect to the service it provided.

I find that PAWC's response to the water main leak concern in 2019 did not violate Section 1501. Mr. Nash testified credibly. He supervised and personally investigated issues related to the main line leaks near Complainant's property in 2019.¹⁵³ After receiving a call about the 2019 leak, Mr. Nash testified PAWC sent a representative to the property to test the water.¹⁵⁴ The initial test indicated the water was not water from the main, but after water continued to leak, PAWC went back out to the property and sounded the main.¹⁵⁵ After sounding the main, PAWC determined there was noise on the line, so PAWC dug up the main, found the leak, and repaired it on October 3, 2019.¹⁵⁶ The 2019 leak was not a large leak, and was considered a "crack around," which is when a crack forms around the pipe and water seeps out.¹⁵⁷ Mr. Nash testified that the leaking water was non-surfacing along the main, but was surfacing down on Complainant's property.¹⁵⁸ Mr. Nash explained that PAWC re-stoned Complainant's entire driveway as a result of the 2019 leak.¹⁵⁹ Complainant's driveway

¹⁵³ Tr. 87.

¹⁵⁴ Tr. 91.

¹⁵⁵ Tr. 91.

¹⁵⁶ Tr. 91-92.

¹⁵⁷ Tr. 91.

¹⁵⁸ Tr. 92-93.

¹⁵⁹ Tr. 88, 93.

subsequently dried up.¹⁶⁰ The service provided by PAWC regarding the 2019 water main leak report, investigation and restoration was reasonable.

Likewise, I find that PAWC's response to the water main leak concern in May 2022 did not violate Section 1501. PAWC timely addressed the reported leak and fixed it. Mr. Nash testified credibly. He testified that Complainant called on May 10, 2022, to report the leak, and PAWC sent a representative to the service location that day to take a water sample.¹⁶¹ The test came back as not water from the main, but water continued to leak onto Complainant's property.¹⁶² PAWC received a second call and went back out to the property and sounded the main.¹⁶³ Mr. Nash testified that once PAWC representatives heard a high-pitched sound on the main, indicating a small leak, they made plans to repair the leak.¹⁶⁴ Mr. Nash testified he went out to the property in May 2022 approximately 3 to 5 times.¹⁶⁵ Repairs were made on May 13, 2022.¹⁶⁶ After repairs were made, Mr. Nash testified he had leak protection personnel sound the main again, and the main was quiet.¹⁶⁷ The service provided by PAWC regarding the May 2022 water main leak report, investigation and fix was reasonable.

It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978). The claims raised in the Complaint requesting monetary damages for alleged damages to Complainant's home and property resulting from water main leaks from PAWC's facilities must be dismissed because the Commission lacks jurisdiction to order such relief.

¹⁶⁰ Tr. 39, 92.

¹⁶¹ Tr. 94-95.

¹⁶² Tr. 94-95.

¹⁶³ Tr. 94-95.

¹⁶⁴ Tr. 95.

¹⁶⁵ Tr. 87-88.

¹⁶⁶ Tr. 95.

¹⁶⁷ Tr. 96.

Accordingly, for the foregoing reasons, the Complaint is dismissed in the ordering paragraphs below for failure to meet the requisite burden of proof.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 52 Pa.C.S. § 331; 66 Pa.C.S. §§ 102, 107, 701, 1501.

2. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

3. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008) (citation omitted).

4. Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701.

5. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

6. To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission.

66 Pa.C.S. § 701.

7. Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied the burden of proof. The complainant now has to provide some additional evidence to rebut the evidence of the respondent. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

8. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

9. Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. §§ 102, 1501.

11. A public utility is not required to provide perfect service. *Williams v. Verizon Pa., LLC*, Docket No. C-2018-3005368 (Final Order entered August 23, 2019).

12. Complainant failed to carry her burden of proof establishing that Pennsylvania-American Water Company violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 332.

13. Complainant failed to carry her burden of proof establishing that Pennsylvania-American Water Company provided inadequate, inefficient, unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

14. The enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Koree Shedlock in *Koree Shedlock v. Pennsylvania-American Water Company* at Docket No. C-2022-3033747 is dismissed.
2. That Docket No. C-2022-3033747 be marked as closed.

Date: July 13, 2023

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge