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January 19, 2024

VIA ELECTRONIC FILING

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

**RE: Ronald and Sheila Derian v. Pennsylvania-American Water Company
Docket No. C-2023-3041252**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is its Brief in the above-referenced 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.

Very truly yours,

STEVENS & LEE



Michael A. Gruin

Enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONALD AND SHEILA DERIAN	:	
	:	
Complainants	:	
	:	
v.	:	Docket No. C-2023-3041252
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

**BRIEF OF RESPONDENT,
PENNSYLVANIA-AMERICAN WATER COMPANY**

Pennsylvania-American Water Company (“PAWC” or “Company”), in accordance with the Interim Order issued on January 3, 2024, hereby files this Post-Hearing Brief in this matter.

I. INTRODUCTION AND STATEMENT OF THE CASE

The Complainants in this case, Mr. and Mrs. Derian, have experienced water infiltration issues on their property for many years. The Derians’ theory is that the water issues at their home are solely caused by underground leaking of PAWC service mains in the general vicinity of the home. However, PAWC has investigated the Complainant’s concerns numerous times, and there is simply no evidence that would allow for a conclusion that the water issues at the home are caused by PAWC, or that PAWC violated the Public Utility Code or the Commission’s regulation or orders in any way.

Notably, the Derians did not provide testimony or evidence from any independent professional that the water issues at their home were caused by PAWC mains leaking. They have not submitted any proof that water from a main entered their property, other than water from one main break which occurred for several hours on one day (June 15, 2021). There are no reports from any neighbor of the Derians of continued water

infiltration from PAWC mains such as the Derians are alleging. While the Derians have submitted notes and testimony regarding several water main breaks in the general vicinity of their home over the past several years, an examination of the details of those main breaks reveals that many of the main breaks were nowhere in the vicinity of their home, and the ones that were nearby could not and did not cause any water infiltration to the Derians' property.

By contrast, PAWC presented the testimony of a professional engineer who made two site visits to the Derian property following the June 15, 2021 main break and prepared two detailed reports of his conclusions. The engineer, Joseph Fagan, concluded that the water infiltration issues had been present at the Derian home for several years, and the only damage that may have been caused by the water from the June 15, 2021 main break is the bowing of the left portion of a retaining wall at the rear of the Derians' report.¹ As Mr. Joe Fagan explained in his report and testimony, the Derian property sits in a bowl at the bottom of two steep hills, and as a result groundwater and surface water flows onto the Derian property regularly and continually. Mr. Fagan noted multiple signs of water infiltration on the Derian property from years before the main break, and the fact that the Derian's self-installed a drainage trench in their basement in 2018 indicates that they were experiencing water issues prior to that time, which is years before any PAWC main break in their area.²

As stated in the Derians' Formal Complaint and on the record in the proceeding, they have brought their complaint for the express purpose of recovering \$12,000,000

¹ PAWC Exhibit 2, at p. 5

² PAWC Exhibit 2, at p. 4

(twelve-million dollars) in monetary damages from PAWC.³ In pursuit of that requested relief, the majority of the Derians' case presentation involved testimony and exhibits describing the water infiltration at their property, the damage they believe was caused by that water infiltration, and the health issues that Mr. Derian has been experiencing in recent years. PAWC is sympathetic to the Derians' situation and Mr. Derian's health issues, however, PAWC has thoroughly investigated the Derian's claims over multiple years, and there is simply no evidence to allow for a conclusion that water from PAWC's mains is the cause of the water issues at the Derian property. More importantly, the question before the Commission is not whether water from PAWC's mains damaged the Derian house, but rather, whether PAWC has violated the Public Utility Code or a regulation or Order of the Commission. See, 66 Pa. C.S. §701. In this case, the Derian's have not alleged that PAWC has violated any specific Commission regulation or Order, so in evaluating the complaint, the sole question to determine is whether the Complainant's have proved by a preponderance of the evidence that PAWC has provided inadequate, inefficient, unsafe, or unreasonable service in violation of Section 1501 of the Public Utility Code (66 Pa. C.S. § 1501). A review of the record in this case makes it clear that the Complainants have not met this burden.

II. LEGAL STANDARDS

Although it has general jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers, the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. See, *Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980);

³ Formal Complaint, at p. 5

and *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). It is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company. See *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

A complaint against a public utility must allege a violation of the Public Utility Code or a regulation or Order of the Commission in order to be legally sufficient. 66 Pa. C.S. §701. A Complainant seeking affirmative relief from the Commission, has the burden of proving the complaint allegations by producing evidence which establishes the material facts by a preponderance of the evidence. See, *Darling v. Philadelphia Electric Co.*, F-00161139 (November 16, 1993); and 66 Pa.C.S. §332(a). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600, 602 (Pa. Commw. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Marguiles*, 70 A.2d 854 (Pa. 1950). Stated differently, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957), *cert. denied*, 353 U.S. 965 (1957).

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

Appeal Bd. (Skirpan), 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.

Norfolk and Western Ry. v. Pa. Public Utility Commission, 489 Pa. 109, 413 A.2d 1037

(1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.

Super. 278, 166 A.2d 96 (1960); *Murphy v. Dept. of Public Welfare*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

III. The Record Reflects that the Complainants Have Not Met Their Burden of Proving That PAWC Provided Inadequate, Inefficient, Unsafe, or Unreasonable Service.

A. The record does not support the allegation that water from PAWC main breaks could be continually leaking into the Derian home

At the hearing, Ms. Derian read from a lengthy journal that she has created about historical PAWC main breaks in the Borough of Munhall, and her absolute belief that PAWC “non-revenue water” is continually draining into her home from underground leaks somewhere in the town. See Tr., at pp. 12-44 and Derian Exhibit 5. The reality is, however, that Ms. Derian has no proof that water from PAWC’s mains is continually seeping into her home, and instead her testimony and evidence consists largely of notes of various PAWC notifications of repair activity in various areas of her town at different points in time that had no possible impact on her property.

PAWC witness Jack Beal addressed each and every one of the incidents that Ms. Derian outlined in Derian Exhibit 5 and explained why those incidents do not support the Derians’ claims that the water issues they were experiencing were caused by PAWC mains. In many cases, there is no record or other evidence that a claimed main break even occurred. For the main breaks that did occur in Munhall during the period in question, Mr. Beal explained how the Company responded to the breaks and repaired them quickly. Each of Ms. Derian’s claims and Mr. Beal’s rebuttals are summarized below:

- Ms Derian alleged a surface water leak on East Eugene/Hill Street starting in April of 2018 and continuing without repair until August 7, 2019. Mr. Beal confirmed that PAWC has no record of any main break in this area during 2018, and it would not be possible that the Company would have allowed a leak to continue without repair for 5 months. Mr. Beal concluded that any leakage would have come from rainwater or runoff, because the Derian house is located in a bowl at the bottom of a steep hill. See Tr., at pp. 72-73.
- b) Next, Ms. Derian said there was PAWC water flowing into her home in January of 2019 and that due to Covid-19 protocols the company could not inspect the situation. Mr. Beal testified that the Company has no record of any main break or leak in the area during January of 2019. Furthermore, he correctly noted that it would have been impossible for Covid-19 protocols to prevent an inspection because Covid-19 did not begin in the United States until March 2020, so it is impossible that the Company had Covid 19 restrictions in place in January of 2019. In addition, he testified that he checked the Company's call records and found no record of any call from Ms. Derian to the call center in January 2019. See Tr., at p. 74.
- Next, Derian Exhibit 5 stated that PAWC called Mrs. Derian to notify her of a main break on E. Eugene St. in Munhall on August 7, 2019. Mr. Beal testified that the Company has no record of any break or leak in the area whatsoever during that time. He explained that Ms. Derian may have received an automated call about doing upgrade work in Munhall on August 7, 2019 which notified customers that there would be a temporary service interruptions and that water tankers would be stationed at the Steel Valley High School. See Tr. at p. 75 and PAWC Exhibit 13.
- Derian Exhibit 5 states that PAWC called the Derians to notify them of a main break and boil water advisory on E. Eugene St. on both September 20 and September 22, 2019. Mr. Beal confirmed that he has no record of any such break. See Tr. at p. 76.
- Next Derian Exhibit 5 she states that on February 11, 2020 there was an increase in water flowing through her foundation and that PAWC provided no help because of the Covid-19 protocol. Mr. Beal responded by again noting that Covid Protocols were not enacted until March 2020, so it is not possible that Ms. Derian was informed that Covid-19 protocols were in place in February 2020. He also noted that the Company does not have any record of any main leak or break, and no reports from any neighbors or anyone else in the neighborhood of any water issues in the area. He also noted that it would not be possible that water was leaking from PAWC's mains and only affecting the Derian property, but no other customer, and PAWC has no record of any other customer complaining about such leakage. See Tr, at pp. 76-77.

- Derian Exhibit 5 next states that PAWC called Ms. Derian to notify her of a water main break on East Eugene and Hill Street on November 6, 2020. Mr. Beal testified that the Company has no record of either a call to her or a main break in her area on that date. He noted that there was a main break elsewhere in Munhall on November 6, 2020, but that was break located on Sycamore Drive, which is nowhere near the Derian property. See Tr., at pp. 77-79 and PAWC Ex. 9 (MapCall Order for November 6 2020 main break on Sycamore Dr.).
- Derian Exhibit 5 next states that Ms. Derian got a call on December 9, 2020 notifying her of a 6 inch main break on E. Eugene St. Mr. Beal explained that there is a record of a leak in her area on December 9, 2020, but it was a $\frac{3}{4}$ service line on E. Eugene St. that was leaking, not a PAWC main, but no were calls made to any customers because none were affected by the service line leak. See Tr. at pp. 80-82 and PAWC Ex. 10 (MapCall Order related to December 9, 2020 service line leak).
- Derian Exhibit 5 next discusses the June 15, 2021 main break. Mr. Beal confirmed that there was a main break on that date, and that the water from that main break flowed onto the Derian property. But Mr. Beal went onto to explain the full timeline of the main break and repair. He explained that personnel were onsite within an hour, and that the repair was completed in about 2 hours, and service was restored in 4 hours. See Tr.at 83-87.
- Next Derian Exhibit 5 referenced main breaks in September of 2022. Mr. Beal confirmed there was a main break on September 12, 2022 and one on September 13, 2022 on Hill Street in Munhall. He testified about the Company's response to the leak. He also described the main cutting and capping project that PAWC did to try to alleviate Ms. Derian's concerns. See Tr. at pp. 88-92 and PAWC Exhibits 6 and 7. Mr. Beal also explained that there are Munhall Borough sewer lines in the vicinity, and water leaking from those lines would also have chlorine in it. Tr. at pp. 92-93.
- Next Derian Exhibit 5 states there was a water line leak repair on East Eugene St. on July 12, 2023. Mr. Beal confirmed that there was a leak that day, but confirmed that no water from the leak impacted the Derian property. See Tr. at pp. 93-94 and PAWC Exhibit 11.
- Next, Derian Exhibit 5 states there was a water line leak repair on East Eugene St. on July17, 2023. Mr. Beal explained that this is another incorrect statement, because the work done on July 17, 2023 was not a main break but rather the installation of a catch basin that did not involve any leaking of water. See Tr. at pp. 94-95.
- Derian Exhibit 5 next describes a water line leak repair on East Miller on August 24, 2023. Mr. Beal confirmed that there was a leak on that day and described the

repairs, and explained why water from that leak could not have affected the Derian property. See Tr. at pp. 95-96 and PAWC Exhibit 12.

- Derian Exhibit 5 next alleges that a main break occurred on Main Street on September 14 2023, but Mr. Beal explained that the only main break in the Munhall Borough that day was many blocks away from the Derian home and in no way could have impacted the Derian property. See Tr. at. Mr. Beal went on to introduce PAWC Exhibit 14, which shows the locations of the various main breaks that Ms. Derian believes impacted her house. Mr. Beal explained how it was impossible for the main breaks to impact the Derian property. See Tr. at pp. 96-98 and PAWC Exhibit 14.
- Derian Exhibit 5 next alleges that a water line repair took place on Superior Street on September 15 2023, and on West Street in October 2023. Mr. Beal explained that the repairs on Superior Street were approximately 1700 feet away from Ms. Derian's house, and the ones on West Street were also a considerable distance away and that there was no way the Derian home could have been impacted by the main breaks or repairs. See Tr. at 98-99 and PAWC Exhibit 14.

In addition to responding to each incident alleged in Derian Exhibit 5 and explaining how Ms. Derian's description of them was incorrect, Mr. Beal also compiled all of the Company's service orders for the houses around the Derian property. None of those service orders reflect any customer's complaining about water issues other than the Derians, except for one home on Main Street on one day in 2020. Mr. Beal explained how if water from PAWC mains was truly flowing onto the Derian property for years as Ms. Derian claims, other houses would certainly be affected too, but none have been. See Tr. at pp. 101-107 and PAWC Exhibit 16.

Mr. Beal explained that the water samples taken at the Derian property show chlorine and some other chemicals, which indicates that at least some of the water in the home had been treated at some point. But he explained that treated water can come from a variety of sources and it does not prove that water from PAWC mains is directly entering the home. See Tr. at pp. 108-110. He explained that the Derian house is at the bottom of two hills. Water coming from any house above the Derian house would flow down to the

Derian's property. Also, it is also possible there are sewer mains or service pipes that are leaking in the area. It is also possible that there are internal leaks in the Derian house that are placing treated water onto their basement. See Tr.at pp. 110-114 and PAWC Exhibit 17.

The reports prepared by engineer Joseph Fagan of Gateway Engineering (PAWC Exhibits 2 and 3) and the photographs in the reports provide very good detail about the topography of the Derian property and the likely causes of water infiltration. The reports note that water infiltration has been occurring at the property for several years as indicated by the need for a trench drain to be installed, water stains and displaced paint on the basement walls, and the continuous flow for water in the drench drain months after the water main break. The reports noted that the dwelling and rear garage walls have experienced long-term saturated conditions on numerous occasions. See PAWC Exhibit 2 at p. 5-6. Mr. Fagan also testified regarding the strong correlation between the days that the Derians experienced water infiltration and days of heavy rainfall in the Munhall area, which also supports the conclusion that the water infiltration being experienced by the Derians is from rainwater and groundwater, not PAWC main leaks. See Tr. At pp. 49-54.

B. PAWC Acted Reasonably and Adequately in Response to the Main Breaks Near the Derian Home and In Investigating the Derians' concerns.

The record also reflects that the Company acted appropriately in response to the main breaks near the Derian house and in its investigations of Ms. Derian's claims. Mr. Beal presented testimony and service orders which showed that all of the main breaks identified by Ms. Derian were identified and repaired within a few hours, with minimal disruption to customers and no injuries or emergencies. See PAWC Exhibits 5,6,7,8,9,10,

11, and 12. PAWC witness Shane Rotolo rejected the allegations in the Complaint that the main above the home was “perforated”, and he explained that one section of the main split, but the rest of the main was not perforated . See Tr. at p. 155. He also explained that mains break for a variety of reasons, and that the fact that main breaks does not mean that the water company acted unreasonably. He also rejected the assertion that the Derians complained about water in their home prior to June of 2021, noting that PAWC has no record of any such complaints. See Tr., at p. 156. See also the testimony of PAWC witness Todd Haslup, at Tr. pp. 56-60 and PAWC Exhibit 13. Mr. Rotolo explained that the field tests done of the water in the Derian home were very basic field tests which only test for the presence of chlorine, and the presence of chlorine could indicate water from various sources other than PAWC mains. He went on to correct numerous inaccuracies in Ms. Derian’s notes about the water samples and potential sources of the water seen on the Derian property. See Tr. At pp. 157-164.

Mr. Rotolo testified that in order to try to address Ms. Derian’s fears that water from the main was leaking into her property, the Company cut and capped the nearby main on September 12 and 13 2022. As a result of that project, the main is capped approximately 50 feet above the Derian property and no water runs past that point. Tr. at pp. 166-167. Mr. Rotolo explained that he spent many hours investigating the Derians’ claims and the company has done many leak detection investigations and sounding of mains, and he has seen no evidence that any PAWC mains are leaking near the Derian house. Mr. Rotolo concluded that any water infiltration at the property was from groundwater and rainwater due to the topography of the Derian property, which lies at the bottom of two hills and has a steep slope behind it. Tr. 168-171. This testimony was not rebutted in any way by any testimony or documented evidence.

The service orders and customer contact records indicate that PAWC was responsive to Ms. Derian's concerns, but ultimately the Company and the Derians had markedly different views on the causes of the water in the Derian home. This disagreement, however, was not unreasonable on PAWC's part, as explained by Mr. Fagan, Mr. Beal and Mr. Rotolo based on their many visits to the home and the investigation of the locations of all of the main breaks cited by Mrs. Derian as causing damage to her home.

IV. CONCLUSION

With no independent evidence in the record to support the Derians' theories of unreasonable service, and with substantial evidence in the evidence reflecting that PAWC also acted in a timely manner to repair the main breaks in Munhall Borough and investigate Ms. Derian's concerns, it is clear that the Derians have not met their burden of proving that PAWC violated Section 1501 of the Public Utility Code by maintaining or furnishing inefficient, unsafe, unreasonable, or inadequate service or facilities, and therefore, the Derians' Complaint must be dismissed.

Respectfully submitted,

STEVENS & LEE



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COUNSEL FOR PENNSYLVANIA
AMERICAN WATER COMPANY

DATE: January 19, 2024

**BEFORE THE
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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 Electronic Mail

Ronald and Sheila Derian
200 E. Miller Ave.
Munhall, PA 15120



Michael A. Gruin

DATED: January 19, 2024