

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------------------|---|----------------|
| Ronald and Shelia Derian | : | |
| | : | |
| v. | : | C-2023-3041252 |
| | : | |
| Pennsylvania American Water Company | : | |

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

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I. INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Ronald and Shelia Derian against Pennsylvania-American Water Company due to Complainants' failure to meet their burden of proof that the Company violated a statute, regulation, order, or tariff provision.

II. HISTORY OF THE PROCEEDING

On June 14, 2023, Ronald and Shelia Derian (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (Company, Respondent, or PAWC), alleging that they were having reliability, safety, or quality problems with their water service at their residence at 200 E. Miller Avenue, PA (service location). Specifically, they averred they were experiencing leaking underground water lines and surface water main breaks causing flooding and continual water infiltration into the service location through the foundation. They averred this has caused extensive and continual structural damage and negative health effects for them due to mold. They further averred that this has been an ongoing situation and the Company has been unable to locate leaks and complete all necessary repairs. As relief, Complainants request the Commission find that the Company has failed to provide reliable and/or quality service to them, direct the Company to stop the water infiltration into their foundation, and pay them \$285,000 in repair costs for their residence and \$12 million in total damages.

On July 6, 2023, the Company filed an Answer and New Matter to the Complaint. PAWC admitted it had a main break in the vicinity of Complainants' home in July 2021, and that water from the main break flowed onto Complainants' property. The Company avers that it met with Complainants on July 15, 2021, to view the extent of the flooding and referred the matter to its insurance carrier to open a damages claim. The Company denied Complainants' allegations regarding water infiltration at the service location. The Company further denied that it was unable to locate the main break and denied that it did not repair the water main break. The

Company further averred that it is not responsible for identifying or fixing leaks in the Complainants' service pipe.

The Company explained that its insurance carrier retained an engineer to investigate Complainants' claims and admitted that the engineer determined that a portion of Complainants' retaining wall may have been impacted by the main break but that the remainder of the issues at the Complainants' property predated the water main break.

In its New Matter, the Company argued that the Commission does not have the power or jurisdiction to award monetary damages, and Complainants' request for such should be stricken from the Complaint.

On July 24, 2023, Complainants filed a response to the New Matter.

On August 2, 2023, the Commission issued an Interim Order assigning this matter to the Mediation Unit of the Office of the Administrative Law Judge.

Mediation was not successful, so, on September 15, 2023, the Commission issued a hearing notice, assigning this matter to me and scheduling a hearing for November 7, 2023. On September 15, 2023, I issued a Prehearing Order.

On November 2, 2023, counsel for the Company contacted me via email, advising that one of its witnesses was unavailable on November 7, 2023. Via email discussions, the parties agreed to reschedule the hearing for November 9, 2023. On November 3, 2023, the Commission issued a Hearing Cancellation and Reschedule Notice.

The evidentiary hearing convened as scheduled on November 9, 2023. Complainants appeared and represented themselves. Michael Gruin, Esq., appeared on behalf of the Company. Ms. Derian testified on behalf of her and her husband.¹ The Complaint was

¹ Mr. Derian was present for the hearing, but Ms. Derian advised he was unable to speak due to a recent medical procedure. Tr. 5.

admitted into the record as Ms. Derian's written testimony. Tr. 43. The Company presented the testimony of Joseph Fagan, a Professional Engineer with Gateway Engineers. Complainants' Exhibits 1-7 were admitted into the record, as were PAWC's Exhibits 2 and 3.

During the hearing on November 9, 2023, I directed the Company to review its records to find any results of any water testing performed at the service location, as well as the results of any sounding tests performed at the service location. Tr. 76. Further, during her testimony, Ms. Derian referred to multiple pictures she took of the damage at the service location which had not been previously served upon myself or counsel for the Company. Therefore, a second day of hearing was scheduled to allow the parties to submit these additional exhibits.

The second day of testimony convened on December 7, 2023, as scheduled. Complainants were present and represented themselves. Mr. Gruin was present on behalf of the Company. Ms. Derian provided additional testimony, and Complainants' Exhibits 8-20 were admitted into the record. The Company presented additional testimony from Joseph Fagan, and called Todd Haslup, Supervisor of Customer Compliance; Jack Beal, Superintendent; and Shane Rotolo, Field Supervisor. PAWC's Exhibits 1-18 were admitted into the record. During the hearing, Ms. Derian objected to the admission of PAWC's Exhibit 15, arguing it was an incomplete record.² PAWC offered to submit additional records as Exhibit 19, and Ms. Derian indicated she had no objection to the admission of Exhibit 15, if the additional records were admitted. During the hearing, I directed Mr. Gruin to submit the additional records as Exhibit 19 within one week of the date of the hearing and informed Ms. Derian she must file objections to the admission of Exhibit 19 within one week of service, if she had any.³

Mr. Gruin served Exhibit 19 on December 11, 2023, and sent it to the court reporter to be filed with the other exhibits admitted at the hearing. Ms. Derian filed no objection to its admission.

² Tr. 254.

³ Tr. 255-256; 319.

The transcripts, with associated exhibits, were filed on December 4, 2023, and December 28, 2023.

At the conclusion of the hearing on December 7, 2023, I advised the parties I would provide an opportunity for them to file briefs by issuing an Order setting a briefing schedule after the transcripts were filed.

On December 14, 2023, Ms. Derian emailed me a “letter.” Ms. Derian’s email was lengthy, obviously taking considerable time on her part. I forwarded it to counsel for the Company to cure the *ex parte* nature of the email. Counsel replied seeking clarification of my directive at the hearing regarding the filing of briefs. I clarified I would be issuing an Order setting a deadline and providing instructions.

On January 3, 2024, I issued an Interim Order setting briefing schedule. I directed the parties to file briefs by January 19, 2024. I explained that if Ms. Derian would like her email to me dated December 14, 2023, to be considered her brief, she did not need to file any additional document. I advised that if she wanted to prepare a new document to be considered, she was required to file it by the deadline. I further advised that if she did not file a new document by the deadline, I would issue an Order attaching her email to the record as her brief.

The Company filed its brief on January 19, 2024. Ms. Derian did not file any additional document.

On February 5, 2024, I issued an Interim Order attaching Ms. Derian’s email to the record as her brief and closing the evidentiary hearing record.

I subsequently discovered issues regarding the filing of the transcripts in this matter. On December 4, 2023, the transcript for the November 9, 2023, hearing was filed by the court reporting agency, and on November 30, 2023, the associated exhibits for the November 9, 2023, hearing were filed by the court reporting agency. This transcript correctly began on page 1 and runs through page 107.

On December 26, 2023, a transcript for the December 7, 2023, hearing was filed, along with the Company's Exhibits admitted during the hearing. Complainants' Exhibits admitted during December 7, 2023, hearing were not filed. The transcript filed on December 26, 2023, is titled, "Transcript Further Hearing (Call-in) 12-7-2023 (Pg 1-110)", which began pagination over at page 1, and began approximately halfway through the December 7, 2023, hearing.

On or about January 30, 2024, the court reporting agency filed a second transcript for the December 7, 2023, hearing, entitled, "Transcript (pg 108-330)", which correctly begins with a cover page on page 108, making it paginated correctly from the first day of hearing which ran through page 107. This transcript was a complete transcript of the December 7, 2023, hearing. The court reporting agency also filed Complainants' Exhibits admitted the second day of hearing.

On or about April 18, 2024, the full transcript of the second day of hearing was removed from the Commission's online docketing system, InfoMAP, leaving only the incomplete and incorrectly paginated transcript filed on December 26, 2023. As of April 18, 2024, the online docket did not include a full transcript of the second day of hearing. As this prevented me from effectively adjudicating this matter, I issued an Interim Order re-opening the record so the docket could be corrected with the proper versions of full transcripts. The issue was subsequently corrected, and, on May 7, 2024, I re-closed the record.

This matter is now ripe for adjudication.

III. FINDINGS OF FACT⁴

A. Introduction

1. Complainants are Ronald and Shelia Derian and they reside at 200 E. Miller Avenue, PA.

2. Respondent is Pennsylvania-American Water Company, a jurisdictional public utility.

3. On June 14, 2023, Complainants filed a Complaint with the Commission against Respondent, alleging unreasonable service due to leaking underground water lines and surface water main breaks causing flooding and water infiltration into the service location through the foundation.

4. Complainants claim there is PAWC water leaking from an unknown number of water mains, flowing subsurface to their house, and coming into the house through their basement and underneath the foundation.⁵

5. On July 6, 2023, the Company filed an Answer to the Complaint, essentially denying the material averments in the Complaint.

6. PAWC provides water service to the service location via an 8-inch cast iron water main running along East Miller Street, which was installed in 1925.⁶

⁴ Due to the number of Findings of Fact and the variety of topics addressed, the Findings of Fact have been organized by topic, with headings beginning with a capital letter. These headings are not to be interpreted as, and are not meant to be, findings of fact, but rather organizational aids for the reader.

⁵ Tr. 68

⁶ Tr. 61, 178, 282; Respondent Ex. 1.

7. The Munhall Sanitation Authority provides wastewater service to the service location.⁷

8. The service location is located at the corner of Hill Street and East Miller Street, at the bottom of hills along both streets.⁸

9. The service location is located downhill from a 6-inch cast iron water main running along Hill Street.⁹

10. East Miller Street runs parallel to East Eugene Street.¹⁰

11. The service location sits below East Eugene Street.¹¹

12. There is a water main running along East Eugene Street.¹²

13. The cast iron mains were installed in 1925 and there is no generally recognized life expectancy for the mains.¹³

14. As long as the cast iron pipe is not causing any issues, it could last 100 to 120 years.¹⁴

⁷ Tr. 37-38.

⁸ Tr. 61; Respondent Ex. 1.

⁹ Tr. 13, 179; Respondent Ex. 1.

¹⁰ Respondent Ex. 1.

¹¹ Tr. 61.

¹² Respondent Ex. 1.

¹³ Tr. 282.

¹⁴ Tr. 282.

15. The Company has wooden mains that have been in the ground 130 years without an issue.¹⁵

B. History of Water Issues at the Service Location Prior to June 2021

16. The back yard is very steep behind Complainants' house, which directs all the ground water to their backyard.¹⁶

17. Since Complainants' property is at the base of two hills and bowl-shaped, it gets water runoff from both directions.¹⁷

18. The backyard at the service location gets soggy in the Spring from melting snow.¹⁸

19. Complainants have resided at the service location for approximately 45 years.¹⁹

20. Mr. Derian constructed a retaining wall in the backyard when they moved into the service location.²⁰

21. In October 2018, as a result of water infiltration into the service location, Mr. Derian created a trench to direct water to a pump so it could be removed away from the service location.²¹

¹⁵ Tr. 283

¹⁶ Tr. 276.

¹⁷ Tr. 194-195.

¹⁸ Tr. 67.

¹⁹ Tr. 66.

²⁰ Tr. 66.

²¹ Tr. 15.

22. On August 7, 2019, the Company issue an alert to customers in the area of the service location advising they may experience a service disruption due to PAWC making system improvements.²²

23. The Company has no record of any breaks or leaks occurring on August 7, 2019, in the area surrounding the service location.²³

24. The Company has no record of any water main breaks or leaks or any customer reports of such until September 20, 2019.²⁴

25. On September 20, 2019, PAWC issued an emergency notification to Complainants advising there was a water main break in the area near the service location resulting in low pressure and water outages.²⁵

26. The Company implemented Covid protocols in March 2020.²⁶

27. On November 6, 2020, there was a water main break on Sycamore Drive, which is over 1,000 feet from the service location.²⁷

28. Prior to December 9, 2020, the Company did not receive any reports from any customers reporting leaks or breaks in the vicinity of the service location in 2018, 2019, or 2020, except for the breaks on September 20, 2019, and November 6, 2020.²⁸

²² Tr. 182; Respondent Ex. 13.

²³ Tr. 182; Respondent Ex. 13.

²⁴ Tr. 179-181; Respondent Ex. 13.

²⁵ Tr. 182; Respondent Ex. 13.

²⁶ Tr. 181.

²⁷ Tr.184-185.

²⁸ Tr. 184, 264.

29. On December 9, 2020, there was a break of a ¾ inch customer-owned service line on the line running along E. Eugene Street.²⁹

30. The Company did not receive any calls from any customers regarding the December 9, 2020, leak other than the customer who owned the service line, as no other customers were affected.³⁰

31. Complainants did not contact PAWC to report any concerns about water infiltration issues until June 15, 2021.³¹

C. The June 15, 2021, Water Main Break

32. On June 15, 2021, the water main running along Hill Street experienced a break, resulting in water running down Complainants' backyard, over their retaining wall, and into their basement.³²

33. PAWC received a call about 7:15 a.m. reporting the leak, and a Company employee visited the site at 8:13 am.³³

34. The PAWC employee who visited the site immediately identified the location of the break, determined it was a main, and implemented a shutdown of the line.³⁴

²⁹ Tr. 187-188; Respondent Ex. 10.

³⁰ Tr. 187-188.

³¹ Respondent Ex. 13.

³² Tr. 13.

³³ Tr. 190.

³⁴ Tr. 191-192.

35. The area of the break was excavated, and the damaged portion of the line was removed and replaced.³⁵

36. The main was repaired at 12:50 p.m.³⁶

37. The June 15, 2021, water main break resulted in damage to the Complainants' retaining wall, flooding in their basement and garage, and mud and debris in the walkway and driveway.³⁷

38. On June 15, 2021, Shane Rotolo, a field supervisor with PAWC, visited the service location to view the property damage.³⁸

39. As a field supervisor, Mr. Rotolo is responsible for all the maintenance and repair of water mains and other infrastructure in his designated geographical area, which includes the service location.³⁹

40. When Mr. Rotolo met with Complainants, he explained that the Company employees determined there was a large hole and a bunch of smaller holes in the main that caused it to split, which caused the main to break.⁴⁰

41. Mr. Rotolo explained to Complainants that the rest of the line was not perforated, it was just one isolated area that needed to be cut out and fixed.⁴¹

³⁵ Tr. 192.

³⁶ Tr. 190.

³⁷ Tr. 13-14; 194-195

³⁸ Tr. 14; Tr. 261.

³⁹ Tr. 261.

⁴⁰ Tr. 263.

⁴¹ Tr. 263.

42. Mr. Rotolo has since visited the service location multiple times to investigate their claims of ongoing water issues.⁴²

43. The Company filed a claim with their insurance company, Travelers Insurance Company (Travelers), to cover the cost of the damage caused by the water main break.⁴³

44. On June 17, 2021, Ms. Derian observed mold growth in her basement.⁴⁴

45. On June 17, 2021, a representative from Travelers contacted Complainants.⁴⁵

46. Travelers arranged for Joseph Fagan, a professional engineer, to inspect service location and prepare a report.⁴⁶

47. Mr. Fagan has conducted hundreds of inspection projects as a professional engineer.⁴⁷

D. Mr. Fagan's Initial Inspection

48. On July 12, 2021, Mr. Fagan inspected the service location.⁴⁸

⁴² Tr. 261.

⁴³ Tr. 14-15.

⁴⁴ Tr. 17.

⁴⁵ Tr. 17

⁴⁶ Tr. 18, 83.

⁴⁷ Tr. 83; Respondent Ex. 18.

⁴⁸ Tr. 18.

49. On July 21, 2024, Mr. Fagan prepared a written report based on his personal inspection of the property.⁴⁹

50. Mr. Fagan was tasked only with determining whether the June 15, 2021, water main break caused any damage to Complainants' property.⁵⁰

51. At the time of Mr. Fagan's inspection on July 21, 2021, Complainants reported their damages as: continuous water flow into the basement trench drain, bowing of the rear and left yard retaining walls, and a crack in the rear patio slab.⁵¹

52. Mr. Fagan took photographs of the Complainants' property during the July 21, 2021, inspection.⁵²

53. Mr. Fagan observed multiple step-cracks, areas of paint displacement, and evidence of prior, failed crack repairs in the Complainants' basement.⁵³

54. In Complainant's garage, Mr. Fagan observed significant staining as well as areas where the paint has been displaced.⁵⁴

55. In Complainant's garage, Mr. Fagan observed a gap in the blockwork.⁵⁵

⁴⁹ Tr. 84; Respondent Ex. 2.

⁵⁰ Tr. 87.

⁵¹ Respondent Ex. 2, pg. 2.

⁵² Respondent Ex. 2.

⁵³ Respondent Ex. 2, pg. 2-3.

⁵⁴ Respondent Ex. 2, pg. 3.

⁵⁵ Respondent Ex. 2, pg. 3.

56. Mr. Fagan observed a crack in the dwelling's rear wall patio slab.⁵⁶

57. The crack in the patio slab had rounded and polished edges.⁵⁷

58. With regard to the non-mortared retaining wall in the rear portion of the right yard, Mr. Fagan observed bowing in the eastern portion where the most significant erosion of the slope above and deposition of material behind the wall had occurred.⁵⁸

59. There are other retaining walls in the Complainants' back yard that show minor rotation, but Mr. Fagan observed these walls did not experience significant erosion or silt deposition.⁵⁹

60. The rotation in these other walls predated the June 15, 2021, water main break.⁶⁰

61. As the garage and basement walls extend up to about six feet below existing grade, they have been and continue to be subjected to lateral pressures which vary seasonally depending upon temperature and precipitation.⁶¹

62. For example, during normal dry "dormant" conditions, the lateral pressure on the basement and garage walls from the soil they support is about 900 lb/lin foot. When the water content of the soil increases following periods of precipitation, the lateral earth pressure increases correspondingly up to about 1080 lb/lin foot.⁶²

⁵⁶ Respondent Ex. 2, pg. 3.

⁵⁷ Respondent Ex. 2, pg. 3.

⁵⁸ Respondent Ex. 2, pg. 3.

⁵⁹ Respondent Ex. 2, pg. 4.

⁶⁰ Respondent Ex. 2, pg. 4.

⁶¹ Respondent Ex. 2, pg. 4.

⁶² Respondent Ex. 2, pg. 4.

63. The pressure reaches its maximum of up to about 1640 lb/lin ft when the soil voids are filled with water, termed saturation, following periods of intense or extended precipitation, and/or significant snow melt.⁶³

64. When saturation occurs, the soil cannot absorb any more water.
Respondent Ex. 2, pg. 5.

65. In addition to lateral pressures, at least the upper several feet of the walls experience lateral frost pressure during winter.⁶⁴

66. Since their construction, the dwelling and garage rear walls have experienced long-term saturated conditions on numerous occasions, which has resulted in the minor wall bowing and cracking. Respondent Ex. 2, pg. 5.

67. The water stains and displaced paint in the blockwork are all evidence that water infiltration has been affecting these walls for quite some time.⁶⁵

68. The necessity and installation of the trench drain installed along these walls further evidences that water issues have been affecting the property for a long time.⁶⁶

69. Patching cracks, without addressing the root cause of the distresses, is a cosmetic repair that will result in the cracks likely recurring.⁶⁷

⁶³ Respondent Ex. 2, pg. 4-5.

⁶⁴ Respondent Ex. 2, pg. 5.

⁶⁵ Respondent Ex. 2, pg. 5.

⁶⁶ Respondent Ex. 2, pg. 5.

⁶⁷ Respondent Ex. 2, pg. 5.

70. The crack in the rear patio slab exhibits polished and rounded edges indicating that it occurred long before the July 15, 2021, water main break.⁶⁸

71. When a crack is exposed to weather, air, and people traveling across it, it wears down the edges slightly and creates what Mr. Fagan terms “rounded and polished edges.”⁶⁹

72. The rear yard retaining wall experienced the majority of the runoff water as a result of the June 15, 2021, water main break, which caused water to flow through and over the wall.⁷⁰

73. The two-tiered retaining wall on the left side of the yard did not experience much water or silt deposition and any bowing of this wall predated the water main break.⁷¹

74. Water infiltration into the basement has been occurring for several years as indicated by: the need for a trench drain to be installed; the water stains and displaced paint on the basement walls; and, the continuous flow of water in the basement trench drain, about one month after the water main break repair.⁷²

75. Mr. Fagan observed mold in Complainants’ basement.⁷³

⁶⁸ Respondent Ex. 2, pg. 5.

⁶⁹ Tr. 90; Respondent Ex. 2, pg. 5.

⁷⁰ Respondent Ex. 2, pg. 5.

⁷¹ Respondent Ex. 2, pg. 5.

⁷² Respondent Ex. 2, pg. 5-6.

⁷³ Respondent Ex. 2, pg. 5-6.

76. After receiving Mr. Fagan's report, Travelers determined that only the damage done to the retaining wall would be covered.⁷⁴

E. Complainants' Health Issues after June 15, 2021

77. After June 15, 2021, Complainants developed rashes on their faces and bodies, Mr. Derian began experiencing breathing problems, and Mrs. Derian experienced congestion and watery eyes.⁷⁵

78. Mr. Derian consulted a pulmonologist, and a CT scan found lung scarring and a lung infection.⁷⁶

F. Complainant's Report of Additional Property Damage

79. On October 3, 2021, Complainants heard a loud noise and observed multiple sunken areas of their backyard.⁷⁷

80. On October 14, 2021, Complainants observed an increased flow of water into the service location.⁷⁸

81. On October 21, 2021, Ms. Derian contacted Travelers and reported the health issues she and her husband were experiencing.⁷⁹

⁷⁴ Tr. 18-19.

⁷⁵ Tr. 20.

⁷⁶ Tr. 23.

⁷⁷ Tr. 24-25.

⁷⁸ Tr. 25; 36.

⁷⁹ Tr. 23-24.

82. On November 3, 2021, Ms. Derian again contacted Travelers and reported there was increased water flow into the service location, additional mold growth, sinking in the backyard, and movement in the windows, doorframes, and patio slab.⁸⁰

G. Mr. Fagan's Second Inspection

83. On November 8, 2021, Mr. Fagan returned to the service location to complete another assessment related to the October 3, 2021, event.⁸¹

84. Mr. Fagan was tasked with determining only whether the damages claimed by the Complainants were caused by the June 15, 2021, water line break.⁸²

85. On November 22, 2021, Mr. Fagan prepared a reevaluation report based on his personal inspection of the property.⁸³

86. At the time of the second visit, Complainants were reporting additional damage to the property: cracks and shifting of the driveway slabs; movement of the front yard sidewalk, steps, and front entry stoop; "subsidence" of areas of the right, rear, and left yards; widening of the crack in the rear porch slab; cracks in the basement front room floor slab; settlement of the floor slab along the right wall of the basement rear room; movement of foundation walls in the basement rear room, including widening of existing cracks in the walls; cracks in the garage floor slab; a crack in the kitchen wall above the exit to the rear patio; and, shifting of the dwelling foundation walls and roof framing in the attic.⁸⁴

⁸⁰ Tr. 25.

⁸¹ Tr. 26, 85.

⁸² Tr. 87.

⁸³ Tr. 85; Respondent Ex. 3.

⁸⁴ Respondent Ex. 3, pg. 2.

87. Mr. Fagan retrieved a piece of the water line pipe that was on the Derian property for further evaluation.⁸⁵

88. Mr. Fagan took photographs of the Complainants' property during the November 8, 2021, visit.⁸⁶

89. When comparing the photos taken for Mr. Fagan's July 22, 2021, report to the photos taken for his November 22, 2021, report, the area Complainants claimed had become uneven due to subsidence appears to be the same, except that the grass was more lush in July than it was in November.⁸⁷

90. The areas of alleged subsidence are the paths that the Complainants follow when walking through the yard; since the grass is thinner and the ground is wetter in the Fall of the year, the paths are getting slightly more compressed when being walked on, creating the shallow depressed area, making it appear to be uneven.⁸⁸

91. Mr. Fagan observed the bases of the posts supporting the porch roof were significantly rotted.⁸⁹

92. Mr. Fagan observed the roof of the porch which was very deteriorated in some areas and previously repaired in others.⁹⁰

⁸⁵ Respondent Ex. 3, pg. 2.

⁸⁶ Respondent Ex. 3.

⁸⁷ Respondent Exs. 2 and 3.

⁸⁸ Respondent Ex. 3.

⁸⁹ Respondent Ex. 3, pg. 3.

⁹⁰ Respondent Ex. 3, pg. 3.

93. Mr. Fagan observed the crack in the rear patio slab, which did not appear to have changed since his July 14, 2021, inspection.⁹¹

94. Mr. Fagan observed mold in the Complainants' basement during his second visit and the condition of the mold was the same as it appeared during his first visit.⁹²

95. Mr. Fagan observed a crack in the basement front room floor slab that Mrs. Derian opined was new and due to runoff from the water main break, but, as the crack exhibits rounded and polished edges, Mr. Fagan determined it was an old crack, predating the June 15, 2021, break.⁹³

96. These cracks in the basement floor are due to a lack of control joints.⁹⁴

97. Based on the American Concrete Institute standards, a 4-in-thick concrete slab should include one control joint for each ten feet of slab length to accommodate curing shrinkage stresses.⁹⁵

98. The floors of Complainants' basement were constructed with neither control nor isolation joints, and the slabs created their own "isolation joints" by cracking.⁹⁶

99. Mr. Fagan observed cracks in the blockwork below the window in the right wall of the basement rear room, which Mrs. Derian opined had widened since his previous

⁹¹ Respondent Ex. 3, pg. 3.

⁹² Tr. 94.

⁹³ Respondent Ex. 3, pg. 4.

⁹⁴ Respondent Ex. 3, pg. 6.

⁹⁵ Tr. 102-103; Respondent Ex. 3, pg. 6.

⁹⁶ Respondent Ex. 3, pg. 6.

inspection, but upon comparing the photos of the two visits, there does not appear to be any difference in these areas.⁹⁷

100. Mr. Fagan observed the right rear corner of the basement rear room, which Mrs. Derian stated had shifted since his last inspection, but upon comparing the photos, there are no changes in this area.⁹⁸

101. Mr. Fagan observed cracks in the garage floor slab, which Mrs. Derian opined are new.⁹⁹

102. Mr. Fagan observed these cracks exhibited rounded and polished edges indicating that they are not new.¹⁰⁰

103. Mr. Fagan observed a crack in the rear wall of the first floor kitchen above the exit to the patio, which Mrs. Derian opined was new.¹⁰¹

104. The crack had significant dust in it, therefore, Mr. Fagan determined it was not new and predated the July 15, 2021, water main break.¹⁰²

105. Mr. Fagan opined that this crack is due to minor interior sagging of the framing spanning the wall opening.¹⁰³

⁹⁷ Respondent Ex. 3, pg. 4.

⁹⁸ Respondent Ex. 3, pg. 4.

⁹⁹ Respondent Ex. 3, pg. 5.

¹⁰⁰ Respondent Ex. 3, pg. 5.

¹⁰¹ Respondent Ex. 3, pg. 5.

¹⁰² Respondent Ex. 3, pg. 5.

¹⁰³ Respondent Ex. 3, pg. 6.

106. Mr. Fagan inspected the attic roof framing and saw no evidence of any recent movement in the framing.¹⁰⁴

107. Mr. Fagan saw no new cracks in any of the basement foundation walls, the first floor walls, or the roof framing that was viewed from the attic.¹⁰⁵

108. Mr. Fagan determined there was no evidence of recent movement of these structural elements.¹⁰⁶

109. Mr. Fagan inspected the exterior face of the piece of the broken water line cast iron pipe he retrieved from the Complainants' property.¹⁰⁷

110. There are no holes in the pipe that would be indicative of pitting.¹⁰⁸

111. The cracks and shifting of the driveway slabs and the movement of the front yard sidewalk, steps, and front entry stoop claimed by Complainants to be recent were all visible in the July 2016 Google Maps Street View.¹⁰⁹

112. Mr. Fagan determined that water infiltration into the basement had been occurring for several years as indicated by: the need for a trench drain to be installed; the water stains and displaced paint on the basement walls; and, the continuous flow of water in the basement trench drain, almost five months after the water main break repair.¹¹⁰

¹⁰⁴ Respondent Ex. 3, pg. 5.

¹⁰⁵ Respondent Ex. 3, pg. 6.

¹⁰⁶ Respondent Ex. 3, pg. 6.

¹⁰⁷ Respondent Ex. 3, pg. 5.

¹⁰⁸ Respondent Ex. 3, pg. 5.

¹⁰⁹ Respondent Ex. 3, pg. 5.

¹¹⁰ Respondent Ex. 3, pg. 6.

113. There have been no new developments or new information provided to Mr. Fagan that would cause him to change the conclusions contained in his two reports.¹¹¹

114. After receiving Mr. Fagan's new report, Travelers determined that no new damage would be covered.¹¹²

H. Complainants' Additional Property Damage in 2022

115. On April 4, 2022, Complainants experienced movement in their foundation, observed a crack on the outside of their home, and observed that the main support beam of the house had shifted lose from the foundation blocks.¹¹³

116. As result of the April 4, 2022, movement, the windows at the service location became difficult to open, cracks in the plaster walls increased in size, and water flow into the foundation and garage increased.¹¹⁴

I. Complainants' Contacts with the Company in 2022

117. On April 5, 2022, Ms. Derian contacted the Company, the representative generated an emergency work order, and the Company sent a field supervisor to the service location.¹¹⁵

¹¹¹ Tr. 85.

¹¹² Tr. 27.

¹¹³ Tr. 28.

¹¹⁴ Tr. 28.

¹¹⁵ Tr. 29.

118. The April 5, 2022, call to the Company is the first call Complainants made to the Company's customer call center to express concerns about a possible leak.¹¹⁶

119. A PAWC crew member went to Complainant's home on April 5, 2022, to investigate her claims of a leak.¹¹⁷

120. The crew member did not see any running water in Complainants' basement, but noted it was raining at the time.¹¹⁸

121. The PAWC crew member performed a field test of the water in Complainants' basement on April 5, 2022.¹¹⁹

122. The field test tested positive for chlorine.¹²⁰

123. If a field test tests positive that means that trace amounts of chlorine were detected, it does not mean that the water is the result of a main line leak or break.¹²¹

124. If a field test indicates the presence of chlorine, the water may be runoff from a storm source or runoff from a neighbor's yard.¹²²

¹¹⁶ Respondent Ex. 13.

¹¹⁷ Tr. 207; Respondent Ex. 15.

¹¹⁸ Tr. 207; Respondent Ex. 15.

¹¹⁹ Tr. 287.

¹²⁰ Tr. 29, 288.

¹²¹ Tr. 265.

¹²² Tr. 265-266.

125. Due to the positive field test, PAWC initiated further leak detection procedures.¹²³

126. The Company has no record of Ms. Derian calling on May 5, 2022.¹²⁴

127. On May 12, 2022, Ms. Derian called the Company again reporting concerns about a possible leak.¹²⁵

128. On May 12, 2022, a PAWC crew member visited and inspected the service location.¹²⁶

129. During the May 12, 2022, inspection, Ms. Derian spoke to a PAWC field supervisor who advised a field crew would visit the service location to collect water samples.¹²⁷

130. On May 13, 2022, a field representative went to the service location and collected a water sample and used leak detection equipment on the water lines.¹²⁸

131. The field representative searched for leaks using leak detection equipment and detected slight noise on the valve at the intersection of East Miller Street and Hill Street.¹²⁹

¹²³ Tr. 288.

¹²⁴ Respondent Ex. 13.

¹²⁵ Respondent Ex. 13.

¹²⁶ Tr. 35, 207-208; Respondent Ex. 15.

¹²⁷ Tr. 36.

¹²⁸ Tr. 36-37, 267, 291.

¹²⁹ Tr. 267-268.

132. The water was analyzed and PAWC determined that the water collected contained fluoride, orthophosphate, and chloride and was possibly PAWC water and further investigation was needed.¹³⁰

133. Water that contains fluoride, orthophosphate, and chloride is not necessarily from a water main leak and could be from a storm sewer, sewer line, or customer-owned service line leak.¹³¹

134. Dirty water could give a false positive of chlorine.¹³²

135. The water analysis of the sample collected on May 13, 2022, is the only water sample analysis PAWC has record of sending to a lab for testing.¹³³

136. The water sample was not tested for fecal matter.¹³⁴

137. On May 17, 2022, a work crew from the Company arrived at the service location.¹³⁵

138. PAWC work crews dug up the line where the field representative thought he heard the noise, but they did not find any leaks.¹³⁶

¹³⁰ Tr. 215-216; Respondent Ex. 17.

¹³¹ Tr. 199, 217-218; 296.

¹³² Tr. 217.

¹³³ Tr. 238.

¹³⁴ Tr. 295.

¹³⁵ Tr. 37; 268.

¹³⁶ Tr. 268.

139. The noise the field representative heard was likely just the noise of water coming through the valve, which was old and may not have been open all the way.¹³⁷

140. During the May 17, 2022, visit, a Company employee took an additional water sample for field testing.¹³⁸

141. During the May 17, 2022, visit, and after PAWC performed its leak detection survey which did not locate any leaks, Mr. Rotolo suggested to Ms. Derian that the water causing damage in her home may be sewage water, and not water provided by the Company.¹³⁹

142. Ms. Derian subsequently contacted the Munhall Sanitation Authority.¹⁴⁰

143. On May 19, 2022, representatives from Chester Engineering visited the service location and inspected the sewer lines per the request of the Munhall Sanitation Authority.¹⁴¹

144. On May 20, 2022, Mr. Rotolo went to the service location and spoke to Ms. Derian.¹⁴²

145. At the time of Mr. Rotolo's visit on May 20, 2022, the trench in Complainants' basement was damp, but there was not enough water for him to collect a sample.¹⁴³

¹³⁷ Tr. 268.

¹³⁸ Tr. 37; 268-269, 293.

¹³⁹ Tr. 37-38; Tr. 269, 294.

¹⁴⁰ Tr. 38.

¹⁴¹ Tr. 38.

¹⁴² Tr. 39, 269-270.

¹⁴³ Tr. 269-270.

146. If there truly was a leak causing water to enter Complainants' home, water would be running into the basement continuously, it would not stop and would not be dry as it was on May 20, 2022.¹⁴⁴

147. During Mr. Rotolo's visit on May 20, 2022, Ms. Derian obtained water from deep in the basement trench, but Mr. Rotolo could not confirm the source of that water or how long it had been there.¹⁴⁵

148. The water Ms. Derian obtained from the trench field tested positive for chlorine, but that was not enough for Mr. Rotolo to conclude it was PAWC water.¹⁴⁶

149. On May 20, 2022, Mr. Rotolo contacted Ms. Derian and reported that the water sample showed the water was potentially PAWC water, and crews would begin digging on the line on to locate potential leaks.¹⁴⁷

150. On June 6, 2022, the Company sent a crew to the main on East Eugene Street as a result of Complainants' repeated calls regarding her concerns about a leak.¹⁴⁸

151. On June 6, 2022, the crew was unable to find a leak, but did install a sounding point to help identify any leaks.¹⁴⁹

¹⁴⁴ Tr. 270.

¹⁴⁵ Tr. 270.

¹⁴⁶ Tr. 270.

¹⁴⁷ Tr. 39, 297.

¹⁴⁸ Tr. 228.

¹⁴⁹ Tr. 195, 228, 271.

152. On June 8, 2022, Company crews returned to the area as part of its leak detection process and located a leak on the 2 inch main line several blocks away from the service location on the top part of Hill Street that dead ends before it reaches Hill Street.¹⁵⁰

153. All the water from the leak discovered on June 8, 2022, was flowing into the storm drain system and no water could have reached Complainants' property unless there was a leak in the storm drain where the water was flowing.¹⁵¹

154. PAWC repaired the leak on June 8, 2022.¹⁵²

155. The work performed on June 8, 2022, was captured on a service order dated June 8, 2022.¹⁵³

156. The water infiltration into the service location did not stop after the Company repaired the leak they located on June 9, 2022.¹⁵⁴

157. On August 1, 2022, Ms. Derian called the Company's customer call center and spoke to multiple Company representatives regarding her concerns over a possible leak.¹⁵⁵

158. On August 2, 2022, a supervisor with the Company contacted Ms. Derian and indicated she would reach out to the appropriate departments of the Company and initiate a new claim with Travelers.¹⁵⁶

¹⁵⁰ Complaint, pg. 8; Tr. 196, 272.

¹⁵¹ Tr. 272.

¹⁵² Tr. 272.

¹⁵³ Tr. 226.

¹⁵⁴ Complaint, pg. 8.

¹⁵⁵ Complaint, pg. 8; Respondent Ex. 13.

¹⁵⁶ Complaint, pg. 8; Respondent Ex. 13.

159. On August 4, 2022, Mr. Rotolo visited the service location and observed continued water flow into the service location's foundation, basement, and garage.¹⁵⁷

160. During the visit on August 4, 2022, Mr. Rotolo did not make any statements saying that the water in Complainants' basement was PAWC water.¹⁵⁸

161. During the visit on August 4, 2022, Mr. Rotolo gave Complainants his Company phone number so they would not have to wait on hold calling into the customer service center.¹⁵⁹

162. On August 10, 2022, a Company representative reviewed Complainants' account and sent a request to Travelers to contact Ms. Derian.¹⁶⁰

163. On August 27, 2022, Complainants experienced significant foundation movement, heard loud cracking and banging sounds, and observed an increase of water infiltration into the service location.¹⁶¹

164. On August 27, 2022, Complainants observed that their foundation block had separated from the main support beam in the basement, the basement stairs had shifted, the backyard retaining wall was pushed out, there were cracks in the yard leading away from the retaining wall, and the outside corner brick had additional cracking.¹⁶²

¹⁵⁷ Complaint, pgs. 8-9.

¹⁵⁸ Tr. 272.

¹⁵⁹ Tr. 272

¹⁶⁰ Respondent Ex. 13.

¹⁶¹ Complaint, pg. 9.

¹⁶² Complaint, pg. 9.

165. On August 29, 2022, Ms. Derian contacted Mr. Rotolo and reported the additional damage to the service location.¹⁶³

166. On or about August 29, 2022, Mr. Rotolo told Ms. Derian that the Company was waiting on Duquesne Light Company to provide assistance so that the Company could perform additional work on the line.¹⁶⁴

167. At no point did Mr. Rotolo make nor hear any other PAWC employee make a statement to Complainants about demolishing their house.¹⁶⁵

168. On September 12, 2022, Company crews began a two-day project on a portion of the line running along Hill Street solely to remove any doubt that the line was leaking into Complainants' property.¹⁶⁶

169. PAWC crews dug up a portion of the line on Hill Street, capped the line on each end, backfilled the area, and installed a new shut off valve.¹⁶⁷

170. The work eliminated a portion of the Hill Street line.¹⁶⁸

171. The work performed on September 12 -13, 2022, was preventative and not the result of any break or leak.¹⁶⁹

¹⁶³ Complaint, pg. 9.

¹⁶⁴ Complaint, pg. 9; Tr. 307.

¹⁶⁵ Tr. 273.

¹⁶⁶ Tr. 197; Tr. 273.

¹⁶⁷ Tr. 197, 273-274; Complaint, pgs. 9-10; Respondent Ex. 13.

¹⁶⁸ Complainant, pgs. 9-10; Tr. 197.

¹⁶⁹ Tr. 197; 235; Respondent Exhibit 7.

172. As result of the work performed on September 12-13, 2022, the portion of the main along Hill Street from 3311 Hill Street to Miller Street was capped and abandoned.¹⁷⁰

173. There is no water running down the main on Hill Street from 3311 Hill Street to Miller Street, approximately 100 feet above Complainants' property.¹⁷¹

174. There is currently no active main behind Complainants' property.¹⁷²

175. The repairs completed on September 12-13, 2022, did not resolve the water infiltration into the service location.¹⁷³

176. The Company has sent crews back out to the service location several times after September 2022 but has not found any additional leaks.¹⁷⁴

177. Mr. Rotolo does not recall a visit to the service location on September 21, 2022.¹⁷⁵

178. On September 23, 2022, Ms. Derian contacted multiple representatives of the Company, including its media manager, CEO and president, Government and External Affairs, and Board of Directors.¹⁷⁶

¹⁷⁰ Tr. 197.

¹⁷¹ Tr. 197, 274.

¹⁷² Tr. 277.

¹⁷³ Complaint, pg. 10.

¹⁷⁴ Tr. 199.

¹⁷⁵ Tr. 274

¹⁷⁶ Complaint, pg. 10.

179. On September 23, 2022, a Company representative contacted Ms. Derian, and initiated a claim with Travelers.¹⁷⁷

180. On September 28, 2022, Ms. Derian contacted multiple Company representatives, including the Director of Communications and External Affairs.¹⁷⁸

181. On September 29, 2022, a Company representative made a note in Complainants' customer contact log noting an email sent by and voicemail made by Ms. Derian to the Company's external affairs department.¹⁷⁹

182. On September 29, 2022, Ms. Derian spoke to a customer advocate from the Company to discuss the insurance claims, and Ms. Derian advised her of the damage to the service location and the health issues suffered by her and her husband.¹⁸⁰

183. Also on September 29, 2022, Ms. Derian sent the Company updated information she wanted passed onto Travelers and requested a follow up on the claim.¹⁸¹

184. The Company sent Travelers the additional information as well as the request that they contact Ms. Derian.¹⁸²

185. Between October 20, 2022, and January 6, 2023, Ms. Derian reached out to multiple representatives of the Company seeking resolution of her complaint.¹⁸³

¹⁷⁷ Complaint, pg. 10.

¹⁷⁸ Complaint, pg. 10; Respondent Ex. 13.

¹⁷⁹ Respondent Ex. 13.

¹⁸⁰ Complaint, pg. 10; Respondent Ex. 13.

¹⁸¹ Respondent Ex. 13.

¹⁸² Respondent Ex. 13.

¹⁸³ Complaint, pg. 11.

186. On January 19, 2023, Complainants received a copy of engineer inspections related to Travelers' denial of the June 15, 2021, date of loss, but did not receive any documentation related to the August 2, 2022, and September 23, 2022, claims.¹⁸⁴

187. In April and May 2023, Ms. Derian sent multiple emails to Company representatives, seeking resolution of her complaint.¹⁸⁵

J. PAWC Water Main Breaks in 2023

188. On July 12, 2023, there was a main line break on East Eugene Street.¹⁸⁶

189. The July 12, 2023, water line break was repaired the same day, and no water from that leak entered Complainants' property.¹⁸⁷

190. On July 17, 2023, the Company had its contractor replace a catch basin on E. Eugene Street.¹⁸⁸

191. The Company has no record of a water line break on July 17, 2023.¹⁸⁹

192. On August 24, 2023, there was a water main leak on the 6 inch main running along East Miller Street, uphill about 100 yards from the Complainants' house.¹⁹⁰

¹⁸⁴ Complaint, pg. 12.

¹⁸⁵ Complaint, pg. 12.

¹⁸⁶ Tr. 49.

¹⁸⁷ Tr. 201.

¹⁸⁸ Tr. 201.

¹⁸⁹ Tr. 201.

¹⁹⁰ Tr. 61-62; Tr. 202.

193. The leak on August 24, 2023, occurred uphill and on the opposite side of the street from Complainant's property.¹⁹¹

194. Any water running along East Miller Street would flow down the curb, down the street, and away from Complainant's property.¹⁹²

195. The break occurring on August 24, 2023, was repaired immediately by the Company.¹⁹³

196. The Company has no record of a leak on August 31, 2023.¹⁹⁴

197. On September 14, 2023, the Company experienced a leak on a water main on Main Street, approximately 1,000 feet away from Complainants' property.¹⁹⁵

198. No other customers reported water flow to their property as a result of the September 14, 2023, leak.¹⁹⁶

199. On September 15, 2023, there was a water main leak on Superior Street, approximately 1,700 feet away from Complainants' property.¹⁹⁷

¹⁹¹ Tr. 203.

¹⁹² Tr. 203.

¹⁹³ Tr. 202; Respondent Exhibit 12.

¹⁹⁴ Tr. 203.

¹⁹⁵ Tr. 203-204; Respondent's Ex. 14.

¹⁹⁶ Tr. 204.

¹⁹⁷ Tr. 205; Respondent's Ex. 14.

200. On October 26, 2023, there was a water main leak on West Street, approximately 5,000 feet away from Complainants' property.¹⁹⁸

201. Between August 24, 2023, and the hearing on December 7, 2023, the Company has no record of any leaks or line breaks occurring in or around East Miller Street, Hill Street, or East Eugene Street.¹⁹⁹

202. The mains on Miller Street and Hill Street are scheduled to be replaced in the year following the hearing, which would be calendar year 2024.²⁰⁰

K. Water Infiltration is Continuing at the Service Location

203. As of the date of the hearing on November 9, 2023, water was still entering the service location from underneath the foundation.²⁰¹

204. Since the Miller Street breaks were repaired, the sump pump in the Complainant's house engages about one time per day.²⁰²

205. Ms. Derian submitted photographs and videos of water flowing into her basement.²⁰³

206. The dates of most of these photographs and videos correspond to dates when there was rainfall in the area.²⁰⁴

¹⁹⁸ Tr. 206; Respondent's Ex. 14.

¹⁹⁹ Tr. 219.

²⁰⁰ Tr. 199.

²⁰¹ Tr. 59.

²⁰² Tr. 66

²⁰³ Complainants' Exhibits 8-20.

²⁰⁴ Tr. 157-159.

207. There are storm sewers and sanitary sewers surrounding the service location that, if damaged, could allow flow onto Complainant's property.²⁰⁵

208. If the water flowing into Complainants' basement was the result of a leak in a PAWC main line, it would be constantly flowing water.²⁰⁶

209. Leaks in main water lines do not stop leaking; they keep running until they are fixed.²⁰⁷

L. The Trench in the Basement is Not Installed Correctly

210. The trench installed in the basement is exposed to the air and is likely the cause of the mold in the basement.²⁰⁸

211. Complainants' sump pump sends water to the trench, rather than sending it to the street.²⁰⁹

212. The trench is supposed to be self-containing and concreted over the top so the house does not retain moisture.²¹⁰

²⁰⁵ Tr. 220.

²⁰⁶ Tr. 311.

²⁰⁷ Tr. 311-312.

²⁰⁸ Tr. 221; 270.

²⁰⁹ Tr. 221

²¹⁰ Tr. 270-271.

213. At least one of Complainants' neighbors has a sump pump that deposits water onto the street, and this neighbor has never made any complaints about water issues to the Company.²¹¹

M. None of the Properties Surrounding the Service Location are Experiencing Water Infiltration Issues due to Water Main Leaks

214. After the May 12, 2022, visit, Mr. Beal looked into a number of homes in the same location as the service location, and did not find any other customer complaints about water leaks or infiltration onto those properties.²¹²

215. The property directly next to the service location, 3311 Hill Street, has not had any active service since 2016.²¹³

216. The house next to the service location on East Miller Street, 212 East Miller Street, has not had any service requests since 2013.²¹⁴

217. The property at 218 East Miller Street has only had one service request – a meter change in 2019.²¹⁵

218. The property at 201 East Miller Street, which is directly across the street from Complainants, has only had one service order related to nonpayment in 2018.²¹⁶

²¹¹ Tr. 221.

²¹² Tr. 208.

²¹³ Tr. 212; Respondent Ex. 16.

²¹⁴ Tr. 213; Respondent Ex. 16.

²¹⁵ Tr. 213; Respondent Ex. 16.

²¹⁶ Tr. 213; Respondent Ex. 16.

219. The property at 205 East Miller Street, which is directly next to 201 East Miller Street, had four move-in/move out requests dating back to 2018, and one report for running water in the basement in 2020.²¹⁷

220. The Company's records indicate the running water issue at 205 East Miller Street was not related to a line leak, but rather ground water or some other source.²¹⁸

221. The Company sounded the main with regard to the leak at 205 East Miller Street and found no leak.²¹⁹

222. The property at 207 E. Miller St., also across from the Complainants' property, had one service request for meter change in 2019 and one emergency order in 2023 for a valve leaking inside the home.²²⁰

223. The properties at 209 East Miller Street, 3315 Hill Street, and 3317 Hill Street have no service orders or investigations with regards to water leaks or infiltration.²²¹

IV. DISCUSSION

Complainants allege that they are having service issues at their residence, specifically PAWC water mains in the area surrounding the service location have had repeated breaks and are currently leaking into their residence, resulting in damage to their property and negative health effects for themselves.

²¹⁷ Tr. 213; Respondent Ex. 16.

²¹⁸ Tr. 241.

²¹⁹ Tr. 318.

²²⁰ Tr. 213; Respondent Ex. 16.

²²¹ Tr. 214; Respondent Ex. 16.

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. *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. §1501. A public utility is not required to provide perfect service. *Williams v. Verizon Pa., LLC*, Docket No. C-2018-3005368 (Final Order entered Aug. 23, 2019).

Complainants’ Position

Ms. Derian testified on behalf of herself and her husband. As an initial matter, I note that Ms. Derian included a lengthy, typewritten document when she filed her Complaint. At the evidentiary hearing, Ms. Derian stated her testimony by reading this document verbatim. After some time, the Company’s counsel interjected, pointing out that Ms. Derian was reading this document attached to her Complaint. For the sake of efficiency and time management, the parties agreed to have this document admitted as Ms. Derian’s written testimony. I have treated this written testimony as if she had read out loud it in its entirety during the hearing. I have

included citations to it throughout this decision. Therefore, there are citations to Ms. Derian’s “testimony” that reference the Complaint.

Ms. Derian testified about the water main break on June 15, 2021, and the damage to her property.²²² She testified there is damage to her retaining wall in the backyard, there is damage to her patio, and her basement and garage that were filled with 6 inches of water.²²³ She also testified that her foundation was sheared by the forces of floodwater and cracks appeared in her garage and basement floors and walls.²²⁴ She testified that the Company’s employees, including Shane Rotolo, responded to the site and informed her they would open a claim with their insurance company, Travelers Insurance.²²⁵

Ms. Derian testified that while Mr. Rotolo was on site on June 15, 2021, she advised him that she had been experiencing water infiltration for some time which prompted her husband to create a trench in the basement in October 2018.²²⁶ She testified she believed there were leaks on the mains on Hill Street and East Eugene Street that were are causing significant increases in the water infiltration into her home.²²⁷

She testified that she had reported this issue to the Company prior to June 15, 2021, and that she used testing packets to test the water coming into her home and it tested as being PAWC water.²²⁸ She testified that Mr. Rotolo told her that the Hill Street line was found to be badly perforated and most likely had been leaking for 10 years or even longer.²²⁹

²²² Tr. 13-14.

²²³ Tr. 13-14.

²²⁴ Tr. 14.

²²⁵ Tr. 15.

²²⁶ Tr. 15.

²²⁷ Tr. 15.

²²⁸ Tr. 15.

²²⁹ Tr. 16.

She testified that after three days, the water flow into her basement slow down and that this was the first time since 2018 that the infiltration of the water had slowed down at all.²³⁰ She testified that she told Mr. Rotolo she had previously raised her concerns to the Company, explaining her story over and over again to different representatives who failed to resolve the issue.²³¹ She testified Mr. Rotolo told her there was a lot of confusion in the Company during that particular time because a majority of employees were working from home due to Covid, and the Company was going through a top-level reorganization of leadership.²³² She claimed Mr. Rotolo told her that the water lines had most likely been leaking underground undetected for many years.²³³

Ms. Derian testified there was mold growing in her basement since June 15, 2021, and it “took on a new life” on June 17, 2021.²³⁴

Ms. Derian testified that Travelers Insurance reached out to her on June 17, 2021, and she explained what she believed to be the damages caused by the leak on June 15, 2021.²³⁵ She further testified that she retained Brando’s specialty group on July 28, 2021, for an estimate for structural repairs to the retaining wall and the back patio, and Baker’s Waterproofing Company on July 2, 2021, for an estimate to repair the foundation and provide waterproofing services.²³⁶ She testified she also got an estimate for storage of her property through Pods.²³⁷

²³⁰ Tr. 16.

²³¹ Tr. 16.

²³² Tr. 17.

²³³ Tr. 17.

²³⁴ Tr. 17.

²³⁵ Tr. 17.

²³⁶ Tr. 18.

²³⁷ Tr. 18.

When Travelers insurance received Mr. Fagan’s report, Travelers told her that only damage to the retaining wall would be covered.²³⁸ Ms. Derian testified that this was unacceptable to her because she had been having ongoing problems for years.²³⁹

Ms. Derian testified about the negative health effects she and her husband were experiencing due to the mold growth in her home.²⁴⁰ She testified that she reported these developments to Travelers.²⁴¹

Ms. Derian testified that on October 3, 2021, their backyard sank suddenly overnight.²⁴² Ms. Derian contacted Travelers reporting additional damages to her property and requested that Joe Fagan return to reevaluate her property.²⁴³

Ms. Derian testified she told Mr. Fagan there were now damages to her yard, windows, the door frame inside the kitchen wall, the patio door frame, as well as creaking floors and widening of the patio cracks.²⁴⁴ After Mr. Fagan completed his reevaluation, Travelers told Ms. Derian that it would only be paying for damages to the retaining wall, as initially determined. Tr. 27. Ms. Derian testified that this again was unacceptable to her.²⁴⁵

Ms. Derian testified there was significant movement in her foundation on April 4, 2022, and that this movement was accompanied by a large crunching sound.²⁴⁶ She testified she

²³⁸ Tr. 18-19.

²³⁹ Tr. 19.

²⁴⁰ Tr. 20-24.

²⁴¹ Tr. 24.

²⁴² Tr. 24-25.

²⁴³ Tr. 25.

²⁴⁴ Tr. 25.

²⁴⁵ Tr. 27.

²⁴⁶ Tr. 28.

inspected her home and found a corner crack on the outside of her home in movement of the bricks.²⁴⁷ She also noted there were cracks in the basement foundation, which widened, and the main support beam of her home had shifted loose from the foundation blocks.²⁴⁸ She testified there is movement of the roof peak and there was difficulty in closing windows and opening and locking the patio doors as the frame had shifted.²⁴⁹ She testified that the flow of water into her home increased, which further degraded her foundation.²⁵⁰

She testified that Company personnel arrived on April 5, 2022, noting the additional damage she claimed occurred and took a water sample, which tested positive as being PAWC water.²⁵¹ Ms. Derian had additional communications with Travelers²⁵² and obtained a quote from Advanced Basement Solutions on May 6, 2022, to repair her foundation.²⁵³ She testified that the representative from advanced basement solutions told her the foundation could not be repaired and that the situation required a rebuild of her home.²⁵⁴

Ms. Derian testified she had contact with an employee representative on May 12, 2022, alleging that “thousands of gallons of Pennsylvania American nonrevenue water had been pouring through her foundation” and this was witnessed by a Company employee on April 5, 2022.²⁵⁵ Ms. Derian testified that Company employees came to her home on May 12, 2022, and she again explained the history of water infiltration at her property.²⁵⁶ She testified that the

²⁴⁷ Tr. 28.
²⁴⁸ Tr. 28.
²⁴⁹ Tr. 28.
²⁵⁰ Tr. 28.
²⁵¹ Tr. 29.
²⁵² Tr. 29-30.
²⁵³ Tr. 30.
²⁵⁴ Tr. 34.
²⁵⁵ Tr. 34-35.
²⁵⁶ Tr. 35-36.

Company sent a representative to her home on May 13, 2022, to obtain a water sample and use leak detection equipment.²⁵⁷ She testified this representative heard a detection ping on his equipment and told her he would report his findings to his supervisor.²⁵⁸

She testified Company crews came to the site on May 17, 2022, to perform some work to find a leak.²⁵⁹ She testified that Mr. Rotolo was present on site and suggested that perhaps the water coming into her basement was sewer water.²⁶⁰ Ms. Derian testified she contacted a representative of Munhall Sanitation Authority on speakerphone in front of Mr. Rotolo, and the Munhall Sanitation Authority representative told her that since the water sample collected by the Company did not contain fecal matter, it could not be sewer water.²⁶¹ Ms. Derian testified that the Munhall Sanitation Authority representative told her she would contact Chester Engineering to send out a crew with GPS equipment and cameras to inspect the sewer line to make sure that it was not the source of the water.²⁶² She testified that Chester Engineering came out to the property on May 19, 2022, performed their inspection and determined there were no sewer lines leaking.²⁶³

Ms. Derian testified that Mr. Rotolo returned to her property on May 18, 2022, to collect another water sample.²⁶⁴ She testified that Mr. Rotolo contacted her on May 20, 2022, and reported to her that the water was confirmed as being PAWC water, and that the Company would begin digging on May 23, 2022, to locate and repair the leaks.²⁶⁵

²⁵⁷ Tr. 36-37.

²⁵⁸ Tr. 37.

²⁵⁹ Tr. 37.

²⁶⁰ Tr. 38.

²⁶¹ Tr. 38.

²⁶² Tr. 38.

²⁶³ Tr. 38.

²⁶⁴ Tr. 38.

²⁶⁵ Tr. 39.

Ms. Derian testified she obtained an environmental assessment of her home performed by US Micro Solutions in Pittsburgh, which found that her home had been contaminated with molds and toxins.²⁶⁶

Ms. Derian testified that the Company performed work on June 7-9, 2022, digging to find any possible leaks.²⁶⁷ Ms. Derian testified that the crew found a “significant leak” and repaired it, but PAWC water continued to infiltrate her home.²⁶⁸

Ms. Derian obtained an estimate from Lowe’s to replace and repair hardwood flooring damaged by the mold and a quote from AquaGuard Systems to rebuild the foundation of her home.²⁶⁹

Ms. Derian testified she had ongoing communications with Travelers in July 2022, without response.²⁷⁰ She had continued communications with Company representatives on August 1 and 2, 2022.²⁷¹

She testified that Mr. Rotolo came out to her property on August 4, 2022, and noted the “continuing, significant” PAWC water entering her home.²⁷² She testified Mr. Rotolo told her the Company was experiencing a lot of changes the past several years due to Covid, and there was confusion among the employees because they were working from home and

²⁶⁶ Tr. 40; Complaint, pg. 12.

²⁶⁷ Complaint, pg. 13.

²⁶⁸ Complaint, pg. 13.

²⁶⁹ Complaint, pg. 13.

²⁷⁰ Complaint, pg. 14.

²⁷¹ Complaint, pg. 14.

²⁷² Complaint, pg. 14.

management was undergoing a reorganization.²⁷³ Mr. Rotolo gave her his personal phone number.²⁷⁴

Ms. Derian testified that her husband experienced additional health complications on August 8, 2022, which required additional tests and further treatment.²⁷⁵

Ms. Derian testified that on August 27, 2022, she experienced the most significant foundation movement to date. She testified that the kitchen ceiling chandelier crystals vibrated momentarily and there was “alarming loud, cracking and banging sounds.”²⁷⁶ She testified that the foundation block had separated from the main support beam in the basement and the basement stairs had shifted to the left. The backyard retaining wall blocks were pushed out and three large cracks developed in the yard leading away from the retaining wall. She testified the outside corner brick had developed a large vertical crack of 12 inches with additional horizontal cracking.²⁷⁷

She testified that she contacted the Company who sent employees to the property and these employees had a conversation with her about demolishing the house due to the extensive water damage and severe mold contamination.²⁷⁸

She testified that a Company work crew came out on September 12-13, 2022, to dig up the water line on Hill Street, cap it, and install shut off valve.²⁷⁹ She testified that the

²⁷³ Complaint, pg. 14.

²⁷⁴ Complaint, pg. 14.

²⁷⁵ Complaint, pg. 15.

²⁷⁶ Complaint, pg. 15.

²⁷⁷ Complaint, pg. 15.

²⁷⁸ Complaint, pg. 15.

²⁷⁹ Complaint, pg. 15.

water infiltration issue was not resolved and Company employees again suggested demolishing the house due to the severity of damage and mold contamination.²⁸⁰

Ms. Derian testified that she had additional contacts with multiple Company representatives from September 21, 2022, through May 30, 2023, and her issue has not been addressed.²⁸¹ She argues that the Company has repeatedly failed to address the damages caused by the infiltration of PAWC water into her home, creating a situation where her property must be demolished and rebuilt and all its contents must be thrown away and replaced.²⁸²

Ms. Derian testified that there have been prior leaks in the vicinity around her property. She testified there were leaks in April 2018 on the lines on East Eugene Street and Hill Street.²⁸³ There were additional water main breaks on East Eugene Street on August 7, 2019, September 20, 2019, and November 19, 2019.²⁸⁴ She testified that the November 19, 2019, leak was a slow leak that was reported to PAWC, but not addressed.²⁸⁵

She testified there was a significant increase of water infiltration running through her foundation in February 2020.²⁸⁶ She testified that from February 2020, based on the average times per day that her sump pump turned on, she calculated there was 1,800 gallons of water flowing into her property until June 15, 2021, when the big main line break occurred.²⁸⁷

²⁸⁰ Complaint, pg. 15-16.

²⁸¹ Complaint, pg. 16-18.

²⁸² Complaint pg. 18-19.

²⁸³ Tr. 46.

²⁸⁴ Tr. 46-47.

²⁸⁵ Tr. 46-47.

²⁸⁶ Tr. 47.

²⁸⁷ Tr. 47-48.

Ms. Derian testified there was a break on November 6, 2020, on East Eugene Street and Hill Street, and another break on December 9, 2020, on East Eugene Street.²⁸⁸ There were urgent line repairs on September 12, 2022, and September 13, 2022, on the Hill Street line.²⁸⁹ There were main line breaks on July 12, 2023, and July 17, 2023, on East Eugene Street.²⁹⁰ There were breaks on East Miller Street on August 24, 2023, and August 31, 2023.²⁹¹

She testified there was an emergency repair of the water main on Main Street on September 14, 2023, and an emergency repair of the water main on Superior Street on September 15, 2023.²⁹² Finally, there was a water main leak on September 19, 2023, on East Miller Street, and an emergency repair of the water main on West Street on October 26, 2023.²⁹³

She testified that, as of the hearing, PAWC water was continuing to infiltrate her home.²⁹⁴

PAWC's Position

The Company presented witness testimony and exhibits to refute Ms. Derian's testimony.

Mr. Fagan is a registered professional engineer in Pennsylvania.²⁹⁵ Mr. Fagan testified he went to the service location on July 12, 2021, to perform inspection and issue a

²⁸⁸ Tr. 49.

²⁸⁹ Tr. 49.

²⁹⁰ Tr. 49; Complainants' Ex. 5.

²⁹¹ Complainants' Exhibit 5.

²⁹² Complainants' Exhibit 5.

²⁹³ Complainants' Exhibit 5.

²⁹⁴ Tr. 58.

²⁹⁵ Tr. 83.

written report for Travelers Insurance.²⁹⁶ Mr. Fagan took photographs of the Complainants' property during the July 21, 2021, inspection which were included in his report.

Mr. Fagan observed multiple step-cracks, areas of paint displacement, and evidence of prior, failed crack repairs in the Complainants' basement.²⁹⁷ In Complainants' garage, Mr. Fagan observed significant staining as well as areas where the paint has been displaced as well as a gap in the blockwork.²⁹⁸

Mr. Fagan noted that the garage and basement rear walls and portions of their respective left and right walls extend up to about six feet below existing grade, and determined they have been and continue to be subjected to lateral pressures which vary seasonally depending upon temperature and precipitation.²⁹⁹ Mr. Fagan explained that, during normal dry "dormant" conditions, the lateral pressure on the basement and garage walls from the soil they support is about 900 lb/lin foot. When the water content of the soil increases following periods of precipitation, the lateral earth pressure increases correspondingly up to about 1080 lb/lin foot.³⁰⁰ The pressure reaches its maximum of up to about 1640 lb/lin ft when the soil voids are filled with water, termed saturation, following periods of intense or extended precipitation, and/or significant snow melt. When saturation occurs, the soil cannot absorb any more water.³⁰¹ He explained that in addition to lateral pressures, at least the upper several feet of the walls experience lateral frost pressure during winter.³⁰² He opined that since their construction, the dwelling and garage rear

²⁹⁶ Tr. 83-84.

²⁹⁷ Respondent Ex. 2, pg. 2-3.

²⁹⁸ Respondent Ex. 2, pg. 3.

²⁹⁹ Respondent Ex. 2, pg. 4.

³⁰⁰ Respondent Ex. 2, pg. 4.

³⁰¹ Respondent Ex. 2, pg. 4-5.

³⁰² Respondent Ex. 2, pg. 5.

walls have experienced long-term saturated conditions on numerous occasions, which has resulted in the minor wall bowing and cracking.³⁰³

Mr. Fagan noted that the water stains, displaced paint in the blockwork, and the necessity of the trench are all evidence that water infiltration has long been affecting these walls.³⁰⁴

Mr. Fagan noted that, patching cracks, without addressing the root cause of the distresses, is a cosmetic repair that will likely cause the cracks to recur. Respondent Ex. 2, pg. 5.

The crack in the rear patio slab exhibited mostly polished and rounded edges.³⁰⁵ Mr. Fagan explained that when a crack is exposed to weather and is exposed to air and people traveling across it, it wears down the edges slightly and creates what Mr. Fagan terms “rounded and polished edges.”³⁰⁶ Therefore, Mr. Fagan concluded this crack had occurred long before the June 15, 2021, water main break.³⁰⁷

With regard to the non-mortared retaining wall in the rear portion of the right yard, Mr. Fagan observed bowing in the eastern portion where the most significant erosion of the slope above and deposition of material behind the wall had occurred.³⁰⁸ Therefore, Mr. Fagan concluded that non-mortared retaining wall experienced the majority of the runoff water as a result of the June 15, 2021, water main break, which flowed through and over it.³⁰⁹ There are other retaining walls in the Complainants’ back yard that show minor rotation, but Mr. Fagan

³⁰³ Respondent Ex. 2, pg. 5.

³⁰⁴ Respondent Ex. 2, pg. 5.

³⁰⁵ Respondent Ex. 2, pg. 4.

³⁰⁶ Respondent Ex. 2, pg. 5.

³⁰⁷ Respondent Ex. 2, pg. 5.

³⁰⁸ Respondent Ex. 2, pg. 3.

³⁰⁹ Respondent Ex. 2, pg. 5.

observed these walls did not experience significant erosion or silt deposition.³¹⁰ Therefore, he determined the rotation in these other walls predated the June 15, 2021, water main break.³¹¹

In conclusion, Mr. Fagan determined within a reasonable degree of engineering certainty, the water infiltration into the basement has been occurring for several years as indicated by: the need for a trench drain to be installed; the water stains and displaced paint on the basement walls; and, the continuous flow of water in the basement trench drain, about one month after the water main break repair.³¹²

On November 8, 2021, Mr. Fagan returned to the service location to complete another assessment.³¹³ Mr. Fagan took photographs of the Complainants' property, retrieved a piece of water pipe from Complainants' yard, and prepared a reevaluation report.³¹⁴

At the time of the second visit, Complainants were reporting additional damage to the property: cracks and shifting of the driveway slabs; movement of the front yard sidewalk, steps, and front entry stoop; "subsidence" of areas of the right, rear, and left yards; widening of the crack in the rear porch slab; cracks in the basement front room floor slab; settlement of the floor slab along the right wall of the basement rear room; movement of foundation walls in the basement rear room, including widening of existing cracks in the walls; cracks in the garage floor slab; a crack in the kitchen wall above the exit to the rear patio; and, shifting of the dwelling foundation walls and roof framing in the attic. Respondent Ex. 3, pg. 2.

Regarding Complainants' allegations of subsidence in their yard, he compared the photos taken for his July 22, 2021, report to the photos taken for his November 22, 2021, report. He noted the area Complainants claimed had become uneven due to subsidence appears

³¹⁰ Respondent Ex. 2, pg. 4.

³¹¹ Respondent Ex. 2, pg. 4.

³¹² Respondent Ex. 2, pg. 5-6.

³¹³ Tr. 26, 85.

³¹⁴ Tr. 85; Respondent Ex. 3.

to be the same, except that the grass was more lush in July than it was in November.³¹⁵ He opined that the areas of alleged subsidence are the paths that the Complainants follow when walking through the yard; since the grass is thinner and the ground is wetter in the Fall of the year, the paths are getting slightly more compressed when being walked on, creating the shallow depressed area, making it appear to be uneven.³¹⁶

Mr. Fagan observed the bases of the posts supporting the porch roof were significantly rotted and the roof of the porch was very deteriorated in some areas and previously repaired in others.³¹⁷

Mr. Fagan noted the crack in the rear patio slab did not appear to have changed since his July 14, 2021, inspection.³¹⁸ Mr. Fagan also noted that the mold in Complainants' basement was about the same as it appeared during his first visit.³¹⁹

Mr. Fagan observed a crack in the basement front room floor slab that Ms. Derian opined was new and due to runoff from the water main break, but, as the crack exhibits rounded and polished edges, Mr. Fagan determined it was an old crack, predating the July 15, 2021, break.³²⁰ Mr. Fagan explained that these cracks in the basement floor are due to a lack of control joints.³²¹ Based on the American Concrete Institute standards, a 4-in-thick concrete slab should include one control joint for each ten feet of slab length to accommodate curing shrinkage stresses.³²² Mr. Fagan explained that the floors of Complainants' basement were

³¹⁵ Respondent Exs. 2 and 3.

³¹⁶ Respondent Ex. 3.

³¹⁷ Respondent Ex. 3, pg. 3.

³¹⁸ Respondent Ex. 3, pg. 3.

³¹⁹ Tr. 94.

³²⁰ Respondent Ex. 3, pg. 4.

³²¹ Respondent Ex. 3, pg. 6.

³²² Tr. 102-103; Respondent Ex. 3, pg. 6.

constructed with neither control nor isolation joints, and the slabs created their own “isolation joints” by cracking.³²³

Mr. Fagan observed cracks in the blockwork below the window in the right wall of the basement rear room, which Ms. Derian opined had widened since his previous inspection, but upon comparing the photos of the two visits, Mr. Fagan concluded there was no difference in these areas.³²⁴

Mr. Fagan observed the right rear corner of the basement rear room, which Ms. Derian stated had shifted since his last inspection, but upon comparing the photos, there are no changes in this area.³²⁵

Mr. Fagan observed cracks in the garage floor slab, which Ms. Derian opined were new, but Mr. Fagan noted these cracks exhibited rounded and polished edges indicating that they were not new.³²⁶

Mr. Fagan saw a crack in the rear wall of the first floor kitchen above the exit to the patio, which Ms. Derian opined was new, but the crack had significant dust in it, therefore, Mr. Fagan determined it was not new and predated the July 15, 2021, water main break.³²⁷ Mr. Fagan opined that this crack is due to minor interior sagging of the framing spanning the wall opening.³²⁸

³²³ Respondent Ex. 3, pg. 6.

³²⁴ Respondent Ex. 3, pg. 4.

³²⁵ Respondent Ex. 3, pg. 4.

³²⁶ Respondent Ex. 3, pg. 5.

³²⁷ Respondent Ex. 3, pg. 5.

³²⁸ Respondent Ex. 3, pg. 6.

Mr. Fagan inspected the attic roof framing and saw no evidence of any recent movement in the framing.³²⁹

Mr. Fagan saw no new cracks in any of the basement foundation walls, the first floor walls, or the roof framing that was viewed from the attic and concluded there was no evidence of recent movement of these structural elements.³³⁰

Mr. Fagan inspected the exterior face of the piece of the broken water line cast iron pipe he retrieved from the Complainants' property. There are no holes in the pipe that would be indicative of pitting.³³¹

Further, Mr. Fagan noted that the cracks and shifting of the driveway slabs and the movement of the front yard sidewalk, steps, and front entry stoop claimed by Complainants to be recent were all visible in the July 2016 Google Maps Street View.³³²

In conclusion, Mr. Fagan determined within a reasonable degree of engineering certainty that that water infiltration into the basement had been occurring for several years as indicated by: the need for a trench drain to be installed; the water stains and displaced paint on the basement walls; and, the continuous flow of water in the basement trench drain, almost five months after the water main break repair.³³³

The Company also presented the testimony of Todd Haslup, Supervisor of Customer Compliance. Mr. Haslup testified about the Company's records regarding Complainants' contacts with the Company. He testified that the records include every inbound

³²⁹ Respondent Ex. 3, pg. 5.

³³⁰ Respondent Ex. 3, pg. 6.

³³¹ Respondent Ex. 3, pg. 5.

³³² Respondent Ex. 3, pg. 5.

³³³ Respondent Ex. 3, pg. 6.

and outbound contact the Derian's have had with the Company since 2018.³³⁴ He clarified however, these records would not contain contacts the Derians had directly with individual Company employees that did not go through the Company's call center.³³⁵

These records do not show Complainants contacted the Company at any point to report a break or leak or express any concerns about the possibility of such prior to June 15, 2021.³³⁶ This directly contradicts Ms. Derian's testimony that she called the Company on January 27, 2019, to report water coming in through her foundation.³³⁷ These records show Complainants did in fact contact the Company in 2019, 2020, and the first half of 2021, but only with regards to payment and billing issues.³³⁸ These call center records do not show any calls from Complainants to the Company's call center regarding water leak issues until April 4, 2022.³³⁹ The records show additional Company contacts with the Complainants on May 12, 2022, June 23, 2022, August 1, 2022, August 2, 2022, August 10, 2022, and September 29, 2022.³⁴⁰ The records also show the Company timely initiated an insurance claim with its insurance company after the loss on June 15, 2021, and passed information to Travelers on Complainants' behalf.³⁴¹

The Company also presented the testimony of Jack Beal, Superintendent. As part of his responsibilities, Mr. Beal oversees three supervisors who are responsible for the day-to-day operations of his district, including inspections, leaks, repairs, and inventory.³⁴²

³³⁴ Tr. 165-166.

³³⁵ Tr. 166.

³³⁶ Respondent Ex. 13.

³³⁷ Tr. 46.

³³⁸ Respondent Ex. 13.

³³⁹ Respondent Ex. 13.

³⁴⁰ Respondent Ex. 13.

³⁴¹ Respondent Ex. 13.

³⁴² Tr. 174.

Mr. Beal testified there were no main line breaks in 2018 through 2020 that resulted in PAWC's water entering Complainants' home.³⁴³ He testified that several of the incidents Ms. Derian identified as main breaks near her home, were actually customer service line leaks or were main line leaks that occurred many blocks away from the service location that could not have impacted her property.³⁴⁴

Ms. Derian testified there was a water leak in April 2018, but Mr. Beal testified that the Company has no record of any such leak.³⁴⁵

Ms. Derian testified that there was water flowing into her home in January 2019, but Mr. Beal testified the Company has no record of any break or leak occurring in the area during that time.³⁴⁶ Further, Mr. Beal noted Ms. Derian testified that when she allegedly reported the leak to the Company in 2019, the Company representative referenced the Company's response to Covid, but this could not be accurate because the Company did not begin Covid protocols until March 2020.³⁴⁷

Ms. Derian testified there was a main break on East Eugene Street on August 7, 2019, but Mr. Beal testified the Company has no record of the break or leak on that date.³⁴⁸ Mr. Beal testified that Ms. Derian may have received an automated call or text message from the Company call center advising her the Company would be making system improvements.³⁴⁹

³⁴³ Tr. 175.

³⁴⁴ Tr. 175.

³⁴⁵ Tr. 179.

³⁴⁶ Tr. 181.

³⁴⁷ Tr. 181.

³⁴⁸ Tr. 182.

³⁴⁹ Tr. 182.

The Company's records admitted as Respondent Exhibit 13 do in fact show an automated message like the one Mr. Beal described.

Ms. Derian testified that there was a main break on September 20, 2019, but Mr. Beal testified the Company has no record of break occurring on this date.³⁵⁰

Ms. Derian testified that the water coming into her basement increased in February 2020, but Mr. Beal testified the Company has no reports of any breaks or leaks occurring in this time period, nor does the Company have any record of any other customers in the vicinity of the service location calling in with concerns of water issues.³⁵¹ Mr. Beal testified that it is simply not possible that water was leaking from a main and only affecting Complainants' property and no one else's.³⁵² Ms. Derian testified that during this time period, she was experiencing 1,800 gallons of water per day running into her home, but Mr. Beal testified that this claim is not credible. He testified that if this volume of water was truly entering her property, other homes would be affected as well, but the Company has no records of any customers calling in with complaints, only the Derians.³⁵³

Ms. Derian testified that there was a water main break on November 6, 2020, on East Eugene Street and Hill Street, but Mr. Beal testified the Company has no records of any such break.³⁵⁴ He says the Company does have a record of a water main break on November 6, 2020, which was located on Sycamore Drive, which was over a thousand feet away from the service location, and could not have impacted the Derians' property.³⁵⁵

³⁵⁰ Tr. 182-183.

³⁵¹ Tr. 183.

³⁵² Tr. 183-184.

³⁵³ Tr. 184.

³⁵⁴ Tr. 184.

³⁵⁵ Tr. 184-185.

Ms. Derian testified that there was a main break on December 9, 2020, on East Eugene Street. Mr. Beal testified that this break occurred 350 feet away from Complainants' property, definitely farther than the 50 feet testified to by Ms. Derian.³⁵⁶ Additionally, this break was a ¾ inch service line break, not a main line break.³⁵⁷ Mr. Beal testified that no customer was affected by the leak other than the owners of the broken service line.³⁵⁸

Ms. Derian testified there was a main line leak on September 13, 2022, but Mr. Beal testified that there was no main line leak reported on this date.³⁵⁹

Ms. Derian testified that there was a main line leak on East Eugene Street on July 12, 2023. Mr. Beal confirmed that there was in fact such a leak, but testified that no water from that leak entered the Derian's property.³⁶⁰

Ms. Derian testified there was a water line leak on East Eugene St. on July 17, 2023. Mr. Beal testified that there was no leak. Rather, the Company's contractor replaced a catch basin which got damaged during a prior repair.³⁶¹

Ms. Derian testified there was a water main break on East Miller Street on August 24, 2023. Mr. Beal confirmed the existence of this break, but testified that no water from that leak could have entered the Derian's property.³⁶² He explained that due to the location of the leak, which was uphill from the Derian's property, and on the opposite side of

³⁵⁶ Tr. 187.

³⁵⁷ Tr. 187-188.

³⁵⁸ Tr. 187-188.

³⁵⁹ Tr. 200.

³⁶⁰ Tr. 201.

³⁶¹ Tr. 201-202.

³⁶² Tr. 202-203.

the road, the water from the leak would have rolled down the hill to the left-hand curb and then down the street, away from the Derian's property.³⁶³

Ms. Derian testified there was a water line leak on August 31, 2023, but Mr. Beal testified the Company has no records of any such leak.³⁶⁴

Ms. Derian testified there is was a main line leak on September 14, 2023. Mr. Beal testified the Company does have a record of this break, but it occurred on Main Street, which is approximately 1,000 feet away from the Derian's property and could not have affected it.³⁶⁵

Ms. Derian testified there was a main line break on September 15, 2023. Mr. Beal testified the Company does have a record of this break, but it occurred on Superior Street, which is approximately 1,700 feet away from the Derian's property and could not have affected it.³⁶⁶

Ms. Derian testified there was a main line break on October 26, 2023. Mr. Beal testified the Company has a record of this break, but it occurred on West Street, which was approximately 5,000 feet away from the Derian's property and could not have affected it.³⁶⁷

Mr. Beal confirmed that there was a major main line break on June 15, 2021.³⁶⁸ He testified that the Company sent an employee immediately to the site.³⁶⁹ The employee

³⁶³ Tr. 203.

³⁶⁴ Tr. 203.

³⁶⁵ Tr. 203-204.

³⁶⁶ Tr. 205.

³⁶⁷ Tr. 206.

³⁶⁸ Tr. 189.

³⁶⁹ Tr. 191.

determined it was a main line break, identified the location of the break, and immediately implemented a shutdown.³⁷⁰ Mr. Beal testified the Company sent crews to repair the leak, and service was restored within four hours.³⁷¹

Mr. Beal testified about the Company's efforts to identify leaks affecting the Complainants' property after June 15, 2021. He testified that the Company installed a sounding point on the line on June 6, 2022, and subsequently identified and repaired a leak on the two inch main along East Eugene Street.³⁷² When Ms. Derian continued to complain of water infiltration, the Company decided to undertake a two day project to cut and cap a portion of the main line along Hill Street.³⁷³ Mr. Beal testified that this project was not in response to any leaks or breaks; rather it was performed solely as a preventative measure to eliminate the possibility of any leaks affecting the Derian's property.³⁷⁴ He testified that the line running along Hill Street from 3311 Hill Street, about 150 feet away from the Derian's property, through Miller Street, was capped and abandoned in place.³⁷⁵

Mr. Beal testified the Company sent out leak detection teams multiple times to the property, trying to locate any leaks, but no additional leaks were ever found.³⁷⁶

Mr. Beal also testified about the service orders for other customers in the vicinity of Complainants' house. Mr. Beal testified he looked into a number of homes in the same location as the service location and did not find any other customer complaints about water.³⁷⁷ The property directly next to the service location, 3311 Hill Street, has not had any active

³⁷⁰ Tr. 191-192.

³⁷¹ Tr. 194.

³⁷² Tr. 195-196.

³⁷³ Tr. 196-197.

³⁷⁴ Tr. 197.

³⁷⁵ Tr. 197.

³⁷⁶ Tr. 198-199.

³⁷⁷ Tr. 208.

service since 2016.³⁷⁸ The house next to the service location on East Miller Street, 212 East Miller Street, has not had any service requests since 2013.³⁷⁹ The property at 218 East Miller Street has only had one service request – a meter change in 2019.³⁸⁰ The property at 201 East Miller Street, which is directly across the street from Complainants, has only had one service order related to nonpayment in 2018.³⁸¹

The property at 205 East Miller Street, which is directly next to 201 East Miller Street, had four move-in/move out requests dating back to 2018, and one report for running water in the basement in 2020.³⁸² Mr. Beal testified that the Company’s records indicate the running water issue at 205 East Miller Street was not related to a line leak, but rather ground water or some other source.³⁸³ He explained that the Company sounded the main with regard to the leak at 205 East Miller Street and found no leak.³⁸⁴

Mr. Beal further testified that the property at 207 E. Miller Street, also across from the Complainants’ property, had one service request for meter change in 2019 and one emergency order in 2023 for a valve leaking inside the home.³⁸⁵

He testified that the properties at 209 East Miller Street, 3315 Hill Street, and 3317 Hill Street have no service orders or investigations with regards to water leaks or infiltration.³⁸⁶

³⁷⁸ Tr. 212; Respondent Ex. 16.

³⁷⁹ Tr. 213; Respondent Ex. 16.

³⁸⁰ Tr. 213; Respondent Ex. 16.

³⁸¹ Tr. 213; Respondent Ex. 16.

³⁸² Tr. 213; Respondent Ex. 16.

³⁸³ Tr. 241.

³⁸⁴ Tr. 318.

³⁸⁵ Tr. 213; Respondent Ex. 16.

³⁸⁶ Tr. 214; Respondent Ex. 16.

In response to Ms. Derian's testimony that the water inside her house tested positive for chlorine, Mr. Beal testified that sewer water also contains traces of chlorine.³⁸⁷ He testified that, although the water sample obtained by the Company and sent to the lab for analysis contained chlorine, this does not necessarily mean that the water entered Complainants' property as a result of a main line leak or break.³⁸⁸ Mr. Beal testified that the water could be from the storm sewer or sewer line, or break in a customer-owned service line.³⁸⁹ Further, he testified that dirty water could give a false positive of chlorine.³⁹⁰

Mr. Beal testified regarding the topography of the Complainants' home. He testified that the service location is located at the bottom of a steep hill and he opines that a majority of the Derian's water issues are due to rain water.³⁹¹ He testified that the Derians installed a trench in their basement in 2018, but the Company has no records of any breaks or leaks impacting their property in 2018, suggesting the issue is not related to main line breaks or leaks.³⁹² He further opined that sewer lines or customer-owned service lines in the vicinity of the Derian's property are leaking.³⁹³

Mr. Beal testified no other customers have complained about ongoing water infiltration issues in the vicinity of the Complainants' property.³⁹⁴ Ms. Derian testified that she is having a very large water volume flowing into her property nonstop, and this has been going on for years. Mr. Beal testified if this were true, there would be other properties affected other

³⁸⁷ Tr. 199.

³⁸⁸ Tr. 216.

³⁸⁹ Tr. 217.

³⁹⁰ Tr. 217.

³⁹¹ Tr. 180.

³⁹² Tr. 180.

³⁹³ Tr. 217-218.

³⁹⁴ Tr. 214.

than Complainants' property.³⁹⁵ While water may still be entering the Derian's property, Mr. Beal testified that, in his opinion, it is not a result of any breaks or leaks on PAWC mains.³⁹⁶

Mr. Beal also noted that the trench and sump pump installed in the Derian's basement is not installed correctly. The sump pump sends the water to a trench, rather than to the street. The trench is exposed to the air which, in Mr. Beal's opinion, is the source of the mold problem in Complainants' house. Mr. Beal explained that there is at least one neighbor of the Derian's who has a sump pump which deposits water onto the street and that neighbor has never made any complaints about water infiltration problems to the Company.³⁹⁷

Mr. Beal testified that the mains on Miller Street and Hill Street are rescheduled to be replaced in the year following the hearing, which would be calendar year 2024.³⁹⁸

Finally, Shane Rotolo testified for PAWC. Mr. Rotolo is a Field Supervisor for the Company and is responsible for all the maintenance and repair of water mains and other infrastructure in his designated area.³⁹⁹ He testified that he has visited the Derian's property several times to investigate their claims. His first time meeting them was at their house on June 15, 2021.⁴⁰⁰

Mr. Rotolo testified regarding several conversations Ms. Derian claimed to have had with him. Ms. Derian testified about a conversation she had with him on June 15, 2021, where Mr. Rotolo allegedly told her that the line on Hill Street was "badly perforated it had been leaking for 10 years or even longer." Mr. Rotolo denied making this comment to Ms. Derian.⁴⁰¹

³⁹⁵ Tr. 214-215.

³⁹⁶ Tr. 219.

³⁹⁷ Tr. 221.

³⁹⁸ Tr. 199.

³⁹⁹ Tr. 261.

⁴⁰⁰ Tr. 261-262.

⁴⁰¹ Tr. 262.

He testified that he explained to her that there was a “large hole and a bunch of smaller holes in the main that caused it to split, and that’s what caused the main break.”⁴⁰² He testified that the rest of the line was not perforated, it was just that isolated area of the main that the crew cut out and fixed.⁴⁰³

Ms. Derian testified that there were many complaints made to the Company about water coming into the Derian’s property in 2018 through 2020. Mr. Rotolo denied having any record of such complaints.⁴⁰⁴

Ms. Derian testified that Mr. Rotolo allegedly told her that there was a lot of confusion at the Company due to people working from home and a company reorganization, but Mr. Rotolo denied ever making such a comment to Ms. Derian.⁴⁰⁵

Ms. Derian also testified that Mr. Rotolo allegedly told her that a water line was most likely leaking underground, but Mr. Rotolo also denied making this comment.⁴⁰⁶

Mr. Rotolo testified about field tests. He explained that these tests are very basic, and do not indicate the source of the water that was tested. If a sample tests positive for chlorine, this does not mean that the water is the result of a main leak and could be storm runoff from a neighbor’s house.⁴⁰⁷

Mr. Rotolo testified that a field representative went to Complainants’ property on May 13, 2022, collected a water sample that field-tested positive for chlorine, and used leak

⁴⁰² Tr. 262-263.

⁴⁰³ Tr. 263.

⁴⁰⁴ Tr. 263-264.

⁴⁰⁵ Tr. 264

⁴⁰⁶ Tr. 264.

⁴⁰⁷ Tr. 264.

detection equipment to try to locate any possible leaks.⁴⁰⁸ Mr. Rotolo testified that the crewmember detected a slight noise on the valve at the intersection of East Miller Street and Hill Street. He testified that the Company dug up the area but found no leak. Mr. Rotolo opined that the sound the worker heard was due to the valve not being open all the way and creating a sound when the water went through the valve.⁴⁰⁹

Ms. Derian testified that she had a conversation on May 20, 2020, with Mr. Rotolo, where he confirmed that the water in her basement was water from a PAWC main line leak and committed to repairing the lines. Mr. Rotolo denied making these comments.⁴¹⁰ He testified that during that visit the trench was “basically dry” and “damp.”⁴¹¹ Mr. Rotolo testified that if the water in her basement was truly the result of a PAWC main leak, the water would be running to the basement continuously and would not stop.⁴¹² He testified that there was not enough water in the trench that day for him to collect a sample, but Ms. Derian “pulled a water sample from deep in the drain.”⁴¹³ He testified that there was no way for him to know the source of the water sample she collected, since no water was currently flowing into the property, and suggested that she may have dumped the water there herself.⁴¹⁴

Mr. Rotolo testified that the Company located a leak on a main on Hill Street at the top part of the street on June 7, 2020.⁴¹⁵ He testified that all the water from that leak was flowing into the storm drain system. He testified that nothing was even leeching down the hill towards

⁴⁰⁸ Tr. 266-267.

⁴⁰⁹ Tr. 268.

⁴¹⁰ Tr. 269.

⁴¹¹ Tr. 269-270.

⁴¹² Tr. 270.

⁴¹³ Tr. 270.

⁴¹⁴ Tr. 270.

⁴¹⁵ Tr. 271-272.

Complainants’ property, and there was no way any water reached their house unless there was a damaged part of the storm drain leaking.⁴¹⁶

Ms. Derian testified that Mr. Rotolo had a conversation with her on August 4, 2020, wherein Mr. Rotolo admitted that PAWC was responsible for her water infiltration problems and apologized for it. Mr. Rotolo denied making these statements, explaining that he “never said the water in the Derian’s basement was ours, because I don’t believe that it is.”⁴¹⁷

In response to Ms. Derian’s testimony that she had a conversation with the Company supervisors on August 27, 2022, wherein the supervisors discussed demolishing her house due to the extensive water damage, Mr. Rotolo testified he has no recollection of ever having any such conversation with Ms. Derian and is not aware of any other supervisor doing so.⁴¹⁸

Mr. Rotolo testified that, since the work to cut and cap the main on Hill Street was performed on September 12 and 13, 2022, there is no water currently running through that line, which is approximately 100 or 50 feet away from Complainants’ property.⁴¹⁹

Ms. Derian testified that Mr. Rotolo visited the property on September 21, 2022, and noted continued water infiltration into the basement. Mr. Rotolo testified he does not recall this visit.⁴²⁰

Mr. Rotolo testified that the drain in Complainants’ basement is not installed properly and that this is the cause of the mold issues.⁴²¹ He testified that the drain is “wide open”

⁴¹⁶ Tr. 272.

⁴¹⁷ Tr. 272.

⁴¹⁸ Tr. 273.

⁴¹⁹ Tr. 274.

⁴²⁰ Tr. 274.

⁴²¹ Tr. 270.

and that it should be “self-contained and concreted back over” so that the house won’t retain moisture.⁴²²

Mr. Rotolo also provided testimony regarding the PAWC mains. He explained that the cast iron mains were installed in 1925 and there is no generally recognized life expectancy for those mains.⁴²³ He opined that as long as the pipe is not causing any issues it could last 100 to 120 years.⁴²⁴ He noted that the Company has wooden mains that have been in the ground 130 years without an issue.⁴²⁵

Mr. Rotolo opined about the source of the water in Complainants’ basement. He testified that he does not believe that it is possible that it is water from a Company main.⁴²⁶ He testified that there have been a couple of routine breaks in the general vicinity of Complainants’ property in the past two or three years, but all those were isolated and quickly repaired.⁴²⁷ He testified that the only main break where water got onto Complainants’ property was the one occurring on June 15, 2021.⁴²⁸

He testified that, in his opinion, it is simply not possible that the Company’s water has been continually flowing onto their property. He testified that he has spent many hours investigating these claims, yet he has not seen any evidence that any of the mains are leaking.⁴²⁹ Mr. Rotolo further testified that Ms. Derian is the only customer in the whole area who has made

⁴²² Tr. 269-270.

⁴²³ Tr. 282.

⁴²⁴ Tr. 282.

⁴²⁵ Tr. 283.

⁴²⁶ Tr. 275.

⁴²⁷ Tr. 275.

⁴²⁸ Tr. 275.

⁴²⁹ Tr. 275.

any complaints about water infiltration.⁴³⁰ If the Company was experiencing chronic leaks like she is claiming, Mr. Rotolo opined that there would be other customers in the area also complaining of water infiltration.⁴³¹

Mr. Rotolo testified he believes that the reason the Derian's have had water issues over the years is due to the topography of the area. He testified that due to where the property sits with respect to the hillsides surrounding, it is reasonable to conclude the property is going to get rain water continually flowing into their property from any rainstorm or snowmelt.⁴³² He explained that their backyard is very steep behind their home and this directs all the groundwater directly to their backyard.⁴³³

Analysis and Conclusion

The proponent of a rule or order has the burden of proof.⁴³⁴ In this case, based upon the evidence, Complainants must prove PAWC failed to provide adequate, efficient, safe, and reasonable service regarding water main leaks and breaks in the vicinity of their property to prevail in this case.⁴³⁵

Section 1501 of the Code 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.⁴³⁶ Upon finding that the service or facilities of a public utility are unreasonable, unsafe

⁴³⁰ Tr. 276.

⁴³¹ Tr. 276.

⁴³² Tr. 276.

⁴³³ Tr. 276.

⁴³⁴ 66 Pa.C.S. § 332(a).

⁴³⁵ 66 Pa.C.S. § 1501.

⁴³⁶ 66 Pa.C.S. § 1501.

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.⁴³⁷

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.⁴³⁸ “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,...^[439]

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.”⁴⁴⁰ Thus, the test to determine the adequacy of a utility’s service and facilities is that of reasonableness.⁴⁴¹

After reviewing the evidence, I find Complainants failed to meet their burden of presenting substantial evidence that the Company violated the Code, a Commission regulation or order, or a PAWC tariff provision with respect to the service it provided.

I find that the evidence presented does not establish that Complainants reported any water infiltration issues at their property prior to June 15, 2021. There are no Company

⁴³⁷ 66 Pa.C.S. § 1505.

⁴³⁸ *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

⁴³⁹ 66 Pa.C.S. § 102

⁴⁴⁰ *Re Metropolitan Edison Co.*, 80 Pa.P.U.C. 663, 672 (1993).

⁴⁴¹ *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 No. C-2008-2061244 (Order entered Jan. 28, 2010).

records to show they did, and Ms. Derian's testimony that the Company representative she allegedly talked to in January 2019 referenced the Company's Covid procedures does not make sense since the Company only implemented those procedures in March 2020.⁴⁴² Furthermore, the Company records do not show that any other customer called to report water infiltration issues during the period of 2018-2020.⁴⁴³ If Complainants were truly experiencing the water infiltration described by Ms. Derian in 2018 through 2020, it is reasonable to expect Complainants and other PAWC customers in the area would call to the Company make repeated complaints. They did not.

The evidence shows Complainants' property has been long plagued by water infiltration issues. Mr. Derian installed retaining walls years ago and a sump pump and trench in 2018, when the Company has no record of any main line break or leak in Complainants' area.⁴⁴⁴ Mr. Fagan's expert testimony, based on two inspections of the property, was that, with the exception of some damage to the retaining wall in the back yard, all the damages alleged by Ms. Derian to have occurred since June 15, 2021, would have actually occurred prior to that date.⁴⁴⁵

When the break occurred on June 15, 2021, the Company immediately responded to the site, located and fixed the break, and opened a claim with its insurance company to address the damage the break caused to Complainants' property.⁴⁴⁶ Ms. Derian has contacted the Company regarding the insurance claim, and the Company has been reasonably responsive, responding to her calls and messages and passing along information to Travelers.⁴⁴⁷ To the extent Ms. Derian disagrees with Travelers' handling or denial of her claim, that is between her and Travelers.

⁴⁴² Tr. 181; Respondent Ex. 13.

⁴⁴³ Tr. 184.

⁴⁴⁴ Tr. 15, 180; Respondent Ex. 13.

⁴⁴⁵ Respondent Exs. 2, 3.

⁴⁴⁶ Tr. 14-15, 190-195, 261.

⁴⁴⁷ Respondent Ex. 13.

When Ms. Derian alleged continued water infiltration into her home after June 15, 2021, PAWC sent crews to her home multiple times, conducting field tests, sending a sample to the lab, and using leak detection equipment. When an employee thought he heard a sound on the line during the May 13, 2022, visit, PAWC sent a crew to the site to dig up the area on May 17, 2022, but did not find any leaks.⁴⁴⁸

When Ms. Derian continued to express her concerns after May 17, 2022, the Company made additional visits to her home on May 20, 2022, and did additional digging on June 6, 2022.⁴⁴⁹ While the crew did not locate a leak that day, it installed a sounding point to help discover any leaks.⁴⁵⁰ The Company returned on June 8, 2022, and discovered a leak at the top part of Hill Street.⁴⁵¹ This leak was blocks away from Complainants' property, and all the water from the leak was flowing into a storm drain, not to Complainants' property.⁴⁵²

Although PAWC repaired this leak, Ms. Derian continued to report water was flowing into her property. In response, PAWC decided to undergo a two-day project to remove a section of the main running along Hill Street.⁴⁵³ This work was performed solely to remove any possibility of an undetected leak affecting Complainants' property.⁴⁵⁴ This section of the line is now abandoned in place and has no water flowing through it.⁴⁵⁵

⁴⁴⁸ Tr. 37, 267-268.

⁴⁴⁹ Tr. 39, 228, 269-271.

⁴⁵⁰ Tr. 195, 228, 271.

⁴⁵¹ Complaint, pg. 8; Tr. 196, 272.

⁴⁵² Tr. 272.

⁴⁵³ Tr. 197, 273-274; Complaint, pgs. 9-10; Respondent Ex. 13.

⁴⁵⁴ Tr. 197; 235; Respondent Exhibit 7.

⁴⁵⁵ Tr. 197, 274.

Ms. Derian alleges the water infiltration has continued. PAWC has sent crews back to the property several times since September 2022 and none have detected a leak.⁴⁵⁶ PAWC has responded to her concerns reasonably over multiple years.

Ms. Derian testified that there have been multiple main line leaks in 2023 that have affected her property. Mr. Beal and Mr. Rotolo addressed each alleged main line break. For some of the dates, there were no records of any breaks or leaks, and on others, the breaks or leaks were not close to Complainants' property such that it is unreasonable to suspect they resulted in water entering Complainants' property. Notably, no other customers near Complainants' property have made complaints about ongoing water infiltration issues, and the Company has no records of any breaks or leaks in the mains surrounding Complainants' property since August 24, 2023.⁴⁵⁷

The water PAWC field tested and sent to the lab tested positive for chlorine. Ms. Derian argued this is proof that the water is PAWC water for which PAWC is responsible. Mr. Beal explained that just because water field tests positive for chlorine, this does not necessarily mean it is water from a broken or leaking main.⁴⁵⁸ He explained that storm water and sewer water also contain chlorine, as does water from a broken customer-owned service line.⁴⁵⁹ Furthermore, dirty water, like the samples collected, can result in false positives.⁴⁶⁰

Mr. Rotolo's testimony was similar to Mr. Beal's. He explained that the field tests are very basic and do not indicate the source of the water that was tested.⁴⁶¹ If a sample tests positive for chlorine, this does not mean that the water is the result of a main leak and could be

⁴⁵⁶ Tr 199.

⁴⁵⁷ Tr. 219.

⁴⁵⁸ Tr. 216.

⁴⁵⁹ Tr. 217.

⁴⁶⁰ Tr. 217.

⁴⁶¹ Tr. 264.

storm runoff from a neighbor's house.⁴⁶² A positive result on a water test is simply evidence that more investigation is required by the Company to rule out a broken or leaking main.⁴⁶³

I believe Ms. Derian when she testifies that there is an ongoing water problem at her property. The issue in this case is whether PAWC has acted reasonably in addressing her concerns, and the evidence shows that it has. It has timely repaired all leaks and breaks that have occurred in the area, including the one on June 15, 2021. It has sent crews out to her home multiple times and performed work to repair a leak on June 8, 2022, which did not directly result in water damage to the Derian's property since all water from the leak went down a nearby storm sewer. It is possible there was a leak in that storm sewer line which caused water to flow on to Complainants' property, but if so, that would not be PAWC's responsibility. PAWC performed additional work in September 2022 to remove the portion of the line near Complainants' home.

There is no evidence that the water Ms. Derian claims has been entering her home since 2018 is from an unrepaired PAWC water main. As Mr. Rotolo noted, if there was in fact an unrepaired main line break or leak, the water would be flowing continuously, and would never be dry, as it was during his visit on May 20, 2022.⁴⁶⁴ Additionally, other customers would be contacting the Company to complain of water infiltration issues, which they have not. PAWC has reasonably exhausted all avenues to detect and prevent such a leak.

Mr. Fagan, Mr. Beal, and Mr. Rotolo all testified that the water problems at Complainants' property relate to the topography and location of the property. It sits downhill of two hills, and the land behind the backyard is steep. It is reasonable to conclude that the water issues are likely caused by water flowing down the hills and into Complainants' backyard. Unfortunately, the sump pump installed in the basement pumps water to a trench (which is not properly installed) rather than outside the home. As a result, water pools in the trench inside the home and is likely the source of the mold problem Ms. Derian describes. There is a customer in

⁴⁶² Tr. 264.

⁴⁶³ Tr. 264.

⁴⁶⁴ Tr. 269-270.

Complainants' neighborhood who has a sump pump that pumps water out to the street and this customer has never contacted the Company with water infiltration issues.⁴⁶⁵

It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages.⁴⁶⁶ The claims raised in the Complaint requesting monetary damages for alleged damages to Complainants' home and property resulting from water main leaks from PAWC's facilities must be dismissed because the Commission lacks jurisdiction to order such relief.

While I sympathize with the Derians, and their challenges with regard to Mr. Derian's health and the structural damages to their home, my role in this Initial Decision is to determine whether they presented substantial evidence that PAWC violated the Commission's regulations, its Commission-approved tariff, or a Commission rule or order. Based on all the evidence presented, I find they did not.

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

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. §§ 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). .

⁴⁶⁵ Tr. 221.

⁴⁶⁶ *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

3. 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).

4. 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).

5. 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.

6. 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).

7. 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.

8. 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).

9. 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).

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

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

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

13. 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.

14. 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. §§ 332, 1501.

15. 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 Respondent Exhibit 19 is admitted.

2. That the Formal Complaint of Ronald and Shelia Derian in Ronald and Shelia Derian v. Pennsylvania-American Water Company at Docket No. C-2023-3041252 is dismissed.

3. That Docket No. C-2023-3041252 be marked as closed.

Date: August 2, 2024

_____/s/
Emily I. DeVoe
Administrative Law Judge