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December 27, 2024

VIA ELECTRONIC FILING

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

**RE: Louis Matzel and Jodi Asay v. Pennsylvania-American Water Company
Docket No. C-2023-3045163**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is its Brief in the above-referenced matter. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Michael A. Gruin

Enc.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LOUIS MATZEL AND JODI ASAY	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3045163
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
	:	
Respondent	:	
	:	

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

In accordance with the Fourth Post-Hearing Order issued on December 9, 2024 in this matter, Pennsylvania-American Water Company (“PAWC” or “Company”), by and through its attorneys Stevens & Lee, P.C., files its Brief in the above-referenced matter.

I. STATEMENT OF THE CASE

The Complainants in this case are alleging that PAWC provided water to their home at a pressure that was too high, and that the high pressure caused damage to the water service pipe on their property. The Complainants’ Formal Complaint (“Complaint”) requests that the Pennsylvania Public Utility Commission (“Commission”) require PAWC to install a pressure reducing valve on the supply side of the service pipe. The Complainants also seek compensation for economic damage related to replacement of their customer-owned service pipe.¹

PAWC’s position is that the water pressure provided to the Complainants was within the limits established by the Commission’s regulations, that PAWC’s Commission-approved water tariff establishes that customers have full responsibility for maintaining and repairing their water service lines, and that there is no legal or factual basis for making PAWC responsible for the

¹ See Formal Complaint, at paragraph 5.

repairs to the Complainant's service line. For these reasons, PAWC requests that the Complaint be dismissed.

II. BACKGROUND AND PROCEDURAL HISTORY

On December 27, 2023, Louis Matzel and Jodi Asay ("Complainants") Matzel or Ms. Asay) filed the Complaint with Commission against PAWC. In the Complaint, Complainants alleged that high water pressure led to the damage of the water service line at their service address. Complainants requested that PAWC place a pressure-reducing valve on the supply side of the service line. Complainants further requested reimbursement in the amount of \$12,336, which is comprised of charges on their water bill above their average usage of 2,500 gallons per month; and reimbursement for an excavation bill, the replacement of the service line, and damage to the fence and landscaping at the service address.

On January 19, 2024, PAWC filed an answer to the Complaint. In its answer, PAWC denied the water pressure was too high; asserted that the Complainants' are responsible to install a water pressure regulator pursuant to PAWC's tariff; and noted that the Commission does not have jurisdiction to award monetary damages.

On January 22, 2024, the Commission served an Interim Order directing the parties to hold a resolution conference no later than February 19, 2024, however, the case did not resolve in mediation.

On June 5, 2024, an evidentiary hearing was held telephonically before Administrative Law Judge ("ALJ") Charece Z. Collins. Ms. Asay testified for the Complainants and entered seven exhibits into the record. PAWC presented the testimony of one witness (Mr. Kasey White), and submitted ten exhibits into the record. Near the end of the hearing, the parties entered into settlement discussions, and the parties reached a tentative settlement plan. The parties requested time to continue settlement discussions to see if a final agreement could be

reached. ALJ Collins ordered the record to remain open while the parties continued to explore the possibility of settlement.

On July 1, 2024, ALJ Collins issued the Order Modifying Procedural Schedule which commemorated the discussions at the hearing and required the parties to provide a status update on or before August 2, 2024. Thereafter, ALJ Collins received the transcript of the hearing, with the exhibits admitted at the hearing, on June 27, 2024.

On August 19, 2024, ALJ Collins issued the Order #2 Modifying the Procedural Schedule in response to communication from the parties, requesting an extension of time in which to pursue settlement. ALJ Collins extended the time in which the parties could pursue settlement to August 31, 2024, and required the parties to submit a status update on or before that date.

On August 27, 2024, the OALJ issued a notice to the parties indicating that the proceeding was re-assigned to ALJ Katrina L. Dunderdale.

On August 30, 2024, Complainants filed a request for a hearing, citing engineering difficulties arising during the settlement discussion stage. Complainants requested a hearing to better remediate any possible solutions to the problems.

On September 11, 2024, the Office of Administrative Law Judge (“OALJ”) issued the Telephonic Post-Hearing Conference Notice, scheduling a post-hearing conference in the matter for October 29, 2024. On October 29, 2024, ALJ Dunderdale conducted the conference at which Complainant Ms. Asay and counsel for PAWC appeared. The parties engaged in a discussion of the factual scenario at the service address, the attempts made by the parties to find a resolution and how best to proceed herein. After discussion, the presiding officer indicated an order would be issued after the conference that would direct the parties to meet at the service address to test

the water pressure at the main line, on the service line and inside the residence. Further, the parties agreed Complainants should provide a concise list of what actions Complainants requested from the Commission.

By order dated October 30, 2024, the presiding officer issued the Third Post-Hearing Order which indicated a briefing order would be issued after providing the parties with an opportunity to conduct a home visit, provide a status report and require Complainants to supply the presiding officer with a concise and specific indication of what Complainants request from the Commission. On November 8, 2024, representatives of PAWC met with Ms. Asay and her plumber at her residence to take pressure readings at the meter pit, inside a crawl space inside the residence, and at a point behind the pressure reducing valve located inside the home. On November 14, 2024, PAWC submitted the required status report which summarized the visit to the Complainants' home, and included photographs of the pressure readings taken during that visit at three separate locations.

On or about November 27, 2024, the Complainants submitted a filing which confirmed the three pressure readings taken during the site visit and which articulated three actions that the Complainants were asking the Commission to take in response to the Complaint.

On December 9, 2024, ALJ Dunderdale issued the Fourth Post-Hearing Order establishing a briefing schedule.

III. SUMMARY OF ARGUMENT

The Complaint in this case stems from a leak in the Complainants' water service pipe on their property, which is an unfortunate occurrence that happens as service pipes age. The Complainants' theory is that the service pipe broke because of improperly high water pressure provided by PAWC, and that therefore PAWC should be responsible for the Complainants' cost

of repairing their service pipe. The Complainants also assert that PAWC should install pressure reducing valves to lower the pressure at which water is provided to their property.

The Complainants' claims fail for a number of reasons. First and foremost, based on water pressure readings taken on three different occasions, it was conclusively established that the water pressure provided by PAWC was always within the Commission's required pressure limits as stated in 52 Pa. Code § 65.6(a). The Complainants have acknowledged that the pressure provided by PAWC was within the Commission's limits, but in support of their claim for relief they ask the Commission to apply an entirely new set of water pressure requirements that have no basis in law.

PAWC respectfully submits that the Complaint in this matter should be dismissed because the Complainants' have not met their burden of proving that PAWC violated any tariff, statute, regulation or order. PAWC's tariff clearly establishes that the Complainants have the responsibility for maintaining and repairing their service pipe, and there is no basis under the tariff or any statute or regulation to require PAWC to compensate them for the cost to replace their service pipe.

IV. PROPOSED FINDINGS OF FACT

1. The Complainants reside at 231 Manchester Drive in Bushkill, PA. N.T. 15
2. The Complainants moved to their current residence in 2021. N.T. 16.
3. The Complainants' home was built in 1984. N.T. 44.
4. The Complainants' home is located in PAWC's Saw Creek Distribution system, which has numerous elevation changes. N.T. 61.
5. The Complainants' home is located at the lowest point in the Saw Creek Tank 1 Distribution System. N.T. 61.

6. PAWC is required to maintain adequate pressure in a system in order to serve the highest points in a system, and as a result, pressure in the lower parts of the system will be higher because of gravity. N.T. 61.

7. PAWC did not build the Saw Creek Distribution System. N.T. 62

8. PAWC acquired the Saw Creek Distribution System in 2002. N.T. 62.

9. The Complainant's home is located at an elevation that is approximately ten feet below the road where PAWC's main is located. N.T. 49, 68.

10. PAWC measured water pressure at the Complainants' property on December 21, 2023, and the water pressure at that time was 122 PSI. NT. 73-74 and PAWC Exhibit 7.

11. PAWC measured water pressure at four locations on Manchester Drive in the vicinity of the Complainants' home on May 28, 2024. N.T, 69-70 and PAWC Exhibit 2.

12. The pressure readings at the four locations were 96 pounds per square inch ("p.s.i"), 102 p.s.i, 122 p.s.i and 100 p.s.i. N.T. 71-74 and PAWC Exhibit 2.

13. PAWC's Commission-approved water tariff states that when static pressure is above 100 p.s.i, the customer is responsible for installing and maintaining a pressure reducing valve in the inlet side of the meter. N.T. 76 and PAWC Exhibit 9.

14. PAWC's Commission approved water tariff states that the customer has full responsibility for the installation, repair, replacement and maintenance of all service pipes. N.T. 78 and PAWC Exhibit 9.

15. Customer service pipes break periodically for a variety of reasons. N.T. 78-79.

16. PAWC did not install the service pipes in the Complainants' neighborhood. N.T. 79.

17. The Complainants installed a three stage whole-home water filtration system on June 22, 2022. N.T. 48.

18. The Complainants also installed a pressure reducing valve inside their property. N.T. 48.

19. Filtration units cause higher water pressure on the incoming side of the filter. N.T. 83.

20. PAWC mailed the Complainants multiple letters to notify them that their service pipe may be leaking, starting in November of 2023. N.T. 86 and PAWC Exhibit 3,4,5, and 6.

21. PAWC sent service personnel to the Complainants' property on multiple occasions to investigate the existence of a service pipe leak at the property. N.T. 88-89.

22. PAWC sizes its water main based on the number of service connections on a street. N.T. 93.

23. The PAWC main on Manchester Drive is a six-inch main, and each of the laterals is $\frac{3}{4}$ of an inch, but PAWC does not have information regarding the size of connections and plumbing on the customer's side. N.T. 93.

24. PAWC representatives met Ms. Asay at her property at 231 Manchester Drive, Bushkill, PA on Friday November 8, 2024 at 10:00 a.m. At that time, the pressure gauge in the meter pit at the property reflected a reading of 125 pounds per square inch. PAWC November 13, 2024 status report, and Exhibit 1 thereto.

25. On that same day, the pressure gauge in the crawl space in the Complainants' home reflected a reading of 132 p.s.i. PAWC November 13, 2024 status report, and Exhibit 2.

26. On that same day the pressure gauge located behind the pressure reducing valve in the Complainants' house reflected a reading of 75 p.s.i. PAWC November 13, 2024 status report, and Exhibit 3 thereto.

V. **ARGUMENT**

A. **There is no factual basis to support a finding that PAWC provided inadequate or unreasonable service.**

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. The Pennsylvania Supreme Court has held that when a litigant has the "burden of proof," it means that his claim will not be accepted until he offers sufficient proof to support it. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 48, 70 A.2d 854, 856 (1950). In matters before the Commission, the burden of proof is met when the party establishes the necessary facts by a preponderance of the evidence. A preponderance of the evidence is that degree of proof which "fairly out-weighs the probative value of any proof offered against the claim." *Se-Ling Hosiery*, 364 Pa. at 48-49.

In addition to determining whether a Complainant has satisfied the burden of proof, care must be exercised to insure that the Commission's decision is supported by substantial evidence. 2 Pa. C.S. §704. The term "substantial evidence" has been defined by various Pennsylvania courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A. 2d 1037 (1980); *Murphy v. Dept. of Public Welfare*, 85 Pa. Commonwealth Court 23, 480 A.2d 382 (1984).

In this case, the evidence in the record does not justify any finding of wrongdoing or unreasonable service by Pennsylvania American Water Company with respect to the water

pressure it provided to the Complainants or any other aspect of its service. The level of water pressure that a water utility must provide to its customers is set forth in Section 65.6 of the Commission's regulations (52 Pa. Code § 65.6), which provides:

§ 65.6 Pressures.

- (a) Variations in pressure. The utility shall maintain normal operating pressures of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. **at the main**, except that during periods of peak seasonal loads the pressures at the time of hourly maximum demand may be not less than 20 p.s.i.g. nor more than 150 p.s.i.g. and that during periods of hourly minimum demand the pressure may be not more than 150 p.s.i.g. A utility may undertake to furnish a service which does not comply with the foregoing specifications where compliance with such specifications would prevent it from furnishing adequate service to any customer or where called for by good engineering practices. The authority of the Commission to require service improvements incorporating standards other than those set forth in this subsection when, after investigation, it determines that such improvement are necessary is not hereby restricted. (Emphasis added).

The record conclusively establishes that PAWC provided water at pressures that were within the range required by the Commission's regulations. PAWC measured water pressure at the Complainants' property on December 21, 2023, and the water pressure at that time was 122 p.s.i. N.T. 73-74 and PAWC Exhibit 7. The elevation of the Complainants' home is lower than the PAWC water main, therefore, the pressure at the Complainants' home is higher than the pressure at the water main due to gravity. N.T. 49, 61 68.

PAWC next measured water pressure at four locations on Manchester Drive in the nearby vicinity of the Complainants' home on May 28, 2024. N.T. 69-70 and PAWC Exhibit 2. The pressure readings at the four locations were 96 p.s.i, 102 p.s.i, 122 p.s.i and 100 p.s.i. N.T. 71-74 and PAWC Exhibit 2.² Finally, PAWC representatives met Ms. Asay at her property at

² PAWC's witness explained that the pressure readings were recorded on a standard pressure complaint form, but that the readings were not taken as a result of any customer complaints. See N.T. 70.

231 Manchester Drive, Bushkill, PA on Friday November 8, 2024 at 10:00 a.m. At that time, the pressure gauge in the meter pit at the property reflected a reading of 125 pounds per square inch. *See*, PAWC November 13, 2024 status report, and Exhibit 1. The Complainants have not submitted any evidence whatsoever that PAWC’s water pressure at the main was outside of the Commission’s required ranges. To the contrary, all of the pressure readings submitted into the evidentiary record demonstrate PAWC was compliant with the mandates of 52 Pa. Code § 65.6. As such, there is no basis for a finding that PAWC violated the Commission’s regulations regarding water pressure.

The Complainants have pointed to the case of *Barone v. Pa. P.U.C*, 86 Pa. Cmwlth. 393; 485 A.2d 519 (1984)(“*Barone*”) for the proposition that the Commission has the power to order a water utility to make modifications to its distribution system notwithstanding the fact that the utility was in full compliance with the Commission’s regulations. However, the Commission has subsequently reiterated that any such orders must be justified by substantial evidence. In the case of *Martinko v. Aqua Pennsylvania, Inc.*, Docket No. C-2013-2352596 (Order entered December 10, 2014) (“*Martinko*”), the Commission dismissed a complaint against Aqua Pennsylvania, Inc. (“Aqua”) regarding fluctuations in water pressure that affected showers and household chores because Aqua presented water pressure test results taken at the main that demonstrated compliance with 52 Pa. Code § 65.6. In the Initial Decision, which became final without further Commission action, the ALJ stated:

Based on a review of the record evidence in this case, there is no substantial evidence that Aqua has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to the water pressure in Mr. Martinko’s home. As noted above, Section 65.6 of the Commission’s regulations requires Aqua to maintain pressure between 25 p.s.i.g. and 125 p.s.i.g. at the main, except during peak periods and under other circumstances. The test results presented by Aqua in this case demonstrate that Aqua has complied with that requirement. **In particular, Section 65.6 does not**

require utilities to maintain any specific level of water pressure within a particular consumer's home. Instead, Section 65.6 requires utilities to maintain the specific level of water pressure at the main. (Emphasis added).

In *Martinko*, the ALJ, in discussing the relative significance of pressure testing at the main versus inside the house, explained that the most insightful test of water pressure for the purpose of determining service adequacy is that taken at the main. To that end, the ALJ stated:

the most insightful water pressure test performed by Aqua is presented in Exhibit 6 – the test performed on the fire hydrant downstream from Mr. Martinko's home. The water pressure test performed by Aqua presented in Exhibit 5 is less insightful because that test presents the results of the water pressure test performed in Mr. Martinko's home and Section 65.6 does not require utilities to maintain a certain level of water pressure in a consumer's home. *Id.*

Similarly, in the case of *Rosemary Grell v Suez Pennsylvania, Inc.* (Docket No.

C-2019-3012992, Order entered August 25, 2022), the Commission dismissed a complaint brought by a customer against Suez Pennsylvania Inc. that alleged unreasonable service as a result of low water pressure. The Commission in that case held that

Based upon our review of the record, we conclude that there is no basis to find here that the service provided by Suez (*i.e.* water pressure) is inadequate or unreasonable. The water service pressures following the system upgrade necessary to replace aging facilities, are consistent with the original modeling for the project and with the water service pressures in the remainder of the area served by the pressure district. Following the system upgrade constructed by Suez, the study of water pressure at the main serving the Complainant's residence demonstrates that pressure is within the range of water pressures required by 52 Pa. Code § 65.6. Moreover, we find that 66 Pa. C.S. § 1501 does not create a statutory entitlement to a level of service to which a customer may have become accustomed or previously enjoyed, if the current service being provided is in compliance with the Commission Regulations. For these reasons, we conclude that the service (*i.e.* water pressure) being provided to the Complainant's residence is reasonable and adequate, and that the Complainant has failed to prove that Suez has violated any provision of the Code, or a Commission order or regulation.

Similarly, in the present case, the only evidence of record regarding water pressure at or near the main was provided by PAWC, and all of that evidence demonstrates that PAWC was in full compliance with the pressure requirements of 52 Pa. Code § 65.6. By contrast the,

Complainants' pressure measurements were all taken inside their home, which is at an elevation that is ten feet lower than the main. See N.T. 49, 68. As the Commission held in *Martinko*, pressure tests from inside a home are not insightful for purposes of determining compliance with the Commission's regulations, and the Commission's regulations do not require utilities to maintain a certain level of pressure inside a customer's home.

The Complainants appear to assert that PAWC should be required to make modifications to its distribution system to reduce pressure to the Complainants' home, even though the pressure at the main serving the home is within the Commission's pressure guidelines. However, there is no evidence of record to support such an unprecedented directive. What the Complainants characterize as evidence is nothing more than Ms. Asay's lay opinion combined with references to random water system design standards that are not relevant to the issues before the Commission in the Complaint. See N.T. 28-37. By contrast, PAWC presented the testimony of a witness who has seventeen years of experience in water distribution operations and who oversees the current water distribution operations in the Company's Lehman Pike District. The witness explained that the pressure throughout the system is carefully modeled based on the elevations of the water tank serving the system, and the elevation of each water main location. N.T. 63. The model is created by taking the tank 1 overflow elevation, subtracting the water main location, and dividing by 2.31 feet. The formula results in the expected pressure at each main, and is depicted on PAWC Exhibit No. 1. The expected pressures along Manchester Drive (where the Complainants live) as shown on Exhibit 1 were very much in line with the actual pressures measured at various points on Manchester Drive, as shown on PAWC Exhibits 2 and 7. These exhibits and PAWC's testimony confirm that the water pressure provided at the main on Manchester drive fully complies with the Commission's regulations.

In support of their claim, the Complainants make reference to a smattering of codes, manuals and statutes, including the Pennsylvania Safe Water Drinking Act (35 P.S. §§ 721.1—721.17) , a Moen faucet website, the International Association of Plumbing and Mechanical Officials guidelines, and the Pennsylvania Department of Environmental Protection Public Water Supply Manual. The Complainants argue that these materials support their claim that PAWC did not employ good engineering or design practices in constructing the Saw Creek Distribution System. There are two major flaws with this position. First, PAWC’s witness explained that PAWC did not design or construct the Saw Creek Distribution System, but instead acquired the system in 2002 from Lehman Pike Water and Sewer. N.T. 62. Secondly, the other various manuals, codes and reference materials that the Complainants point to are not relevant to the disposition of this proceeding. Enforcement of the Pennsylvania Safe Drinking Water Act is specifically vested in the Department of Environmental Protection and the Federal Environmental Protection Agency. *Rovin, DDS v. Pa. Pub. Util. Comm’n.*, 94 Pa. Cmwlth 71, 502 A.2d 785 (1986), and none of the other codes or manuals cited by the Complainants are controlling over the Commission or PAWC. The Commission’s regulation at 52 Pa. Code § 65.6 controls, and the evidence in the record clearly reflects that PAWC complied with that regulation in all respects.

B. PAWC’s Commission-approved tariff places the responsibility for the maintenance of service lines and installation of a pressure reducing valve on the Complainants.

Rule 2.16 of PAWC’s Commission-approved water tariff defines a “Service Pipe” as the portion of the water line not owned by the Company which transmits water from the Company-owned main to the Customer’s premises. The water service pipe begins as the Company-owned street connection and continues into the structure of the premise to be supplied. *See* PAWC Exhibit 8.

Rule 4.9 of PAWC's Commission-approved water tariff reiterates that the customer has full responsibility for the installation, repair, replacement, and maintenance of all Service Pipes, including full responsibility for metered water usage attributable to a leak in the Service Pipe. See PAWC Exhibit 8.

Rule 4.7 of PAWC's water tariff also states that when the static pressure is 100 lbs. or more at the Customer's premise, the Customer shall be responsible for the installation and maintenance of a pressure regulator or valve, which shall be installed on the inlet side of the meter. *Id.*

In this case, PAWC has correctly applied its tariff requirements, and the relief being requested by the Complainants is not authorized by the tariff. As confirmed by the tariff, the Complainants, not PAWC, are responsible for the maintenance and repair of their service pipe, and therefore the Complainants' request to have PAWC reimburse them for the cost of repairing their service line is not appropriate under the tariff. With respect to Tariff Rule 4.7, the Complainants in this case have complied with the Rule by installing a pressure reducing valve inside their property. The static pressure at their property exceeds 100 p.s.i, as demonstrated by Exhibit 7 and PAWC's November 13, 2024 status report, and Exhibit 1 thereto. The Complainants installed a pressure reducing valve in June of 2022 and it successfully reduced the pressure inside their property to 75 p.s.i. See PAWC's November 13, 2024 status report and Exhibit 3 thereto.

The record reflects that PAWC's Senior Supervisor of Operations for the Lehman Pike District, Kasey White, met with the Complainants to discuss their interest in installing a second pressure reducing valve at their property, on or in front of their Service Pipe. N.T. 101-102. At that time, Mr. White did not recommend burying a pressure reducing valve because of

maintenance concerns with burying the device, and instead noted that it would be easier to access a pressure reducing valve via a vault or pit in order to maintain it. N.T. 101. During that meeting Mr. White also noted that installing a pressure reducing valve in the existing meter pit would be difficult because of access issues. N.T. 101-102. All of the options discussed involved the customer installing the pressure reducing valve on their premises, in accordance with the tariff. The Complainants in this case appear to be requesting that PAWC install a pressure reducing valve on its side of the street connection, which is not a requirement of the tariff or the Commission's regulations.

Public utility tariffs have the force and effect of law and are binding on the customer as well as the utility. *PPL Elect. Utilities Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth.1995)); see, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981). PAWC has fully complied with its tariff rules regarding pressure reducing valves and the Commission's regulations regarding water pressure. The Complainants appear to recognize that there is no evidence that PAWC has acted unreasonably or improperly in applying its tariff rules, so the Complainants are requesting that the tariff and the Commission's regulations be revised significantly. As outlined in Complainant's Brief, at pages 24-25, the Complainants are requesting the Commission to require PAWC to maintain pressures at no more than 80 p.s.i. and appoint an independent contractor to review compliance with these new pressure requirements. The Complainants are also asking the Commission to require PAWC to modify its tariff significantly to comport with the Complainants' view of how water pressure issues should be addressed. However, none of the relief requested by the Complainants is lawful, appropriate or supported by substantial evidence, for the reasons set forth above.

C. The Commission does not have the authority to award monetary damages to the Complainants.

It is clear that the Complainants are pursuing their Formal Complaint in order to seek monetary compensation from PAWC. That is plainly stated in Paragraph 5 of the Complaint, page 2 of the Complainants' summary of requested relief filed with the Commission on November 18, 2024, and the Complainants' Brief. However, it is well-settled law that the Commission lacks authority to award monetary damages. *Terminato v. Pa. National Insurance Company*, 645 A.2d 1287 (Pa. 1994); *Feingold v. Bell Telephone Company of Pennsylvania*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlt. 1995). The Commission can only make a determination as to whether the Respondent's conduct violated the Public Utility Code or Commission regulations. Therefore, to the extent that the Complainants are making a claim for monetary damages, such a claim is not within the Commission's jurisdiction and must be dismissed.

VI. CONCLUSION

In summary, there is no factual, legal, or jurisdictional basis to grant any of the relief that the Complainants are seeking. The Complainants have the burden of proving their entitlement to relief by substantial evidence, and they have failed to meet this burden. To the contrary, the record reflects that PAWC has fully complied with the Commission's water pressure regulations and correctly applied the rules contained in its Commission-approved water tariff regarding customer responsibility for maintain Service Pipes and installing pressure reducing valves. For the foregoing reasons, Pennsylvania American Water Company respectfully requests that the Complaint be dismissed, with prejudice.

VII. PROPOSED CONCLUSIONS OF LAW

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

2. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

3. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

4. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

5. Utilities must maintain normal operating pressures of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. at the main, except that during periods of peak seasonal loads the pressures at the time of hourly maximum demand may be not less than 20 p.s.i.g. nor more than 150 p.s.i.g. and that during periods of hourly minimum demand the pressure may be not more than 150 p.s.i.g. A utility may undertake to furnish a service which does not comply with the foregoing specifications where compliance with such specifications would prevent it from furnishing adequate service to any customer or where called for by good engineering practices. 52 Pa.Code § 65.6(a).

6. The authority of the Commission to require service improvements incorporating standards other than those set forth in this Section 65.6(a) when, after investigation, it determines that such improvements are necessary is not hereby restricted. 52 Pa.Code § 65.6(a).

7. Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruption or delay. 66 Pa.C.S. § 1501.

8. Section 1501 of the Code does not require a public utility to provide perfect service, but a public utility is obligated to provide service that is reasonable and adequate. *Analytical Lab Servs., Inc. v. Metro. Edison Co.*, Docket No. 2006608 (Order entered December 21, 2007).

9. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, et seq.

10. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977); *Allegheny County Port Authority v. Pa. Pub. Util. Comm'n*, 427 Pa. 562, 237 A.2d 602 (1967).

11. The Commission must act within and cannot exceed its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 157 Pa. Super. Ct. 595, 43 A.2d 348 (1945).

12. It is well-settled law that the Commission lacks authority to award monetary damages. *Terminato v. Pa. National Insurance Company*, 645 A.2d 1287 (Pa. 1994);

Feingold v. Bell Telephone Company of Pennsylvania, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995).

13. Public utility tariffs have the force and effect of law and are binding on the customer as well as the utility. *PPL Elect. Utilities Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth.1995)); see, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

14. Enforcement of the Pennsylvania Safe Drinking Water Act is specifically vested in the Department of Environmental Protection and the Federal Environmental Protection Agency. *Rovin, DDS v. Pa. Pub. Util. Comm'n.*, 94 Pa. Cmwlth 71, 502 A.2d 785 (1986).

15. The Complainants have failed to satisfy their burden of proof to demonstrate that PAWC violated in any way the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff.

VIII. PROPOSED ORDERING PARAGRAPHS

1. The Commission has jurisdiction over the subject matter and parties to this Complaint. 66 Pa. C.S. § 701.

2. As the party seeking affirmative relief from the Commission, Complainants bear the burden of proof. 66 Pa. C.S. § 332(a).

3. As a matter of general principle, a complainant must show that the named utility is re-sponsible or accountable for the problem described in the Complaint in order to prevail.

Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. Pub. Util. Comm'n 196 (1990);

Feinstein v. Philadelphia Suburban Water Company, 50 Pa. Pub. Util. Comm'n 300 (1976).

This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), alloc. den., 602 A.2d 863 (1992).

4. The Complainants failed to meet their burden of proof.

5. The Complaint of Louis Matzel and Jody Asay against Pennsylvania American Water Company at Docket No. C-2023-3045163 is hereby dismissed, with prejudice.

Respectfully submitted,

STEVENS & LEE



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COUNSEL FOR PENNSYLVANIA
AMERICAN WATER COMPANY

DATE: December 27, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LOUIS MATZEL AND JODI ASAY	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3045163
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
	:	
Respondent	:	
	:	

CERTIFICATE OF SERVICE

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

VIA Electronic Mail

Louis Matzel and Jodi Asay
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Bushkill, PA 18324



Michael A. Gruin, (I.D. No. 78625)

DATED: December 27, 2024