

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held February 20, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Ronald and Sheila Derian

C-2023-3041252

v.

Pennsylvania-American Water Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Ronald and Sheila Derian (Complainants or Mr. and/or Ms. Derian) on August 22, 2024,¹ to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Emily I. DeVoe, issued on August 2, 2024, in

¹ On October 10, 2024, the Secretary's Bureau served the Exceptions on All Parties of Record stating that its review of the filing revealed that no Certificate of Service or other indication that the Parties of Record to the case were served with the Exceptions. Pursuant to 52 Pa. Code § 5.535, PAWC was given until October 21, 2024, to file Reply Exceptions

the above-captioned matter, dismissing a Formal Complaint (Complaint) filed on June 14, 2023, by the Complainants against Pennsylvania-American Water Company (PAWC, the Company, or Respondent). On October 21, 2024, PAWC filed its Reply to Exceptions. For the reasons discussed below, we shall deny the Complainants' Exceptions and adopt the ALJ's Initial Decision, wherein the ALJ dismissed the Complaint based upon the finding that the Complainants failed to satisfy their burden of proof, consistent with this Opinion and Order.

I. History of the Proceeding

On June 14, 2023, the Complainants filed the instant Complaint against PAWC alleging that they were having reliability, safety, or quality problems with their water service provided by PAWC at their residence (service location). Specifically, the Complainants averred that they were experiencing leaking underground water lines and surface water main breaks causing flooding and continued water infiltration into the service location through the foundation. They averred that this situation has caused extensive and continual structural damage and negative health effects due to mold, and that this has been an ongoing situation for which PAWC has been unable to locate leaks and complete necessary repairs. As relief, the Complainants requested that the Commission: (1) find that PAWC has failed to provide reliable and/or quality service to them; (2) direct PAWC to stop the water infiltration into their foundation; and (3) direct PAWC to pay them \$285,000 in repair costs for their residence and \$12 million in total damages. Complaint at 2-3.

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 the Complainants' home in July 2021, and that water from the main break flowed onto the Complainants' property. PAWC averred that it met with the 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. PAWC denied the Complainants' allegations regarding water infiltration at the service location, and that it was unable to locate and did not repair the water main break. PAWC further argued that it is not responsible for identifying or fixing leaks in the Complainants' service pipe. PAWC also explained that its insurance carrier retained an engineer to investigate the Complainants' claims and admitted that the engineer determined that a portion of the Complainants' retaining wall may have been impacted by the water main break but that the remainder of the issues at the Complainants' property predated the water main break. Answer at 2-4.

In its New Matter, PAWC argued that the Commission does not have the power or jurisdiction to award monetary damages, and the Complainants' request for such should be stricken from the Complaint. Answer at 5. On July 24, 2023, the Complainants filed a response to the New Matter. I.D. at 2.

Mediation of this matter was not successful. The evidentiary hearing convened as scheduled on November 9, 2023. The Complainants appeared and represented themselves. Ms. Derian testified on behalf of her and her husband. I.D. at 2. The Complaint was admitted into the record as Ms. Derian's written testimony. *Id.* at 2-3 (citing Tr. at 43). The Complainants' Exhibit Nos. 1-7 were admitted into the record. PAWC was represented by counsel. PAWC presented the testimony of one witness, Mr. Joseph Fagan, a Professional Engineer with Gateway Engineers. PAWC's Exhibit Nos. 2-3 were admitted into the record. *Id.*

A second day of hearing convened on December 7, 2023, to allow the Parties to submit additional exhibits and provide further testimony. The Complainants' Exhibit Nos. 8-20 were admitted into the record. PAWC presented additional testimony from Mr. Fagan, as well as the testimony of three additional witnesses. PAWC's Exhibit Nos. 1-18 were admitted into the record. PAWC's late-filed Exhibit No. 19 was admitted by the ALJ in the Initial Decision. I.D. at 3, 78.

PAWC filed its brief on January 19, 2024. On February 5, 2024, the ALJ attached an email from Ms. Derian to the record as the Complainants' brief. That same day, the evidentiary record was closed. I.D. at 4.

The record was re-opened so the docket could be corrected with the proper versions of full transcripts. Following receipt of the corrected transcripts, the record was re-closed on May 7, 2024. I.D. at 4-5.

On August 2, 2024, the Commission served ALJ DeVoe's Initial Decision, wherein the ALJ dismissed the Complaint, finding that the Complainants failed to meet their burden of proof that PAWC violated a statute, regulation, order, or tariff provision. I.D. at 1, 70, 75, 78.

As noted, *supra*, the Complainants filed Exceptions on August 22, 2024. On October 21, 2024, PAWC filed its Reply to Exceptions.

II. Background²

The crux of the Complaint is the Complainants' allegation that PAWC water mains in the area near their service location have experienced repeated breaks and are currently leaking into their residence, resulting in property damage and negative health effects. I.D. at 39. The Complainants testified that a water main break occurred on June 15, 2021, resulting in water infiltration into their home and causing damage to their property, including a retaining wall, patio, basement, and garage. Tr. at 14-15. The Complainants previously reported to PAWC that the service location has been experiencing water infiltration for some time prior to June 15, 2021, which prompted

² For a detailed summary of the positions of the Parties, see pages 40-69 of the Initial Decision, which is incorporated herein.

Mr. Derian to create a trench in the basement in October 2018. The Complainants testified that the water coming into their home tested as PAWC water, and that a PAWC representative said nearby water lines have likely been leaking underground and undetected for many years. Tr. at 15-17. Following the incident on June 15, 2021, PAWC opened a claim with its insurance company, Travelers Insurance, and Travelers Insurance said that only damage to the retaining wall would be covered. Tr. at 15, 18-19.

The Complainants experienced subsequent damage to their backyard, windows, door frames, floors, and patio on October 3, 2021. After a reevaluation, Travelers Insurance said it would only pay for damages to the retaining wall. Tr. at 24-25, 27. Also, on April 4, 2022, the Complainants experienced significant movement in the foundation and a large crunching sound occurred, which resulted in cracks on the outside of the home and foundation; movement of bricks, the main support beam, and roof peak; the inability to close windows and use the patio door; and an increased flow of water into the home. The Complainants testified that, the next day, and again on May 18, 2022, PAWC tested the water and confirmed it as PAWC water. Also, the local sanitation authority determined that the water was not sewer water. PAWC repaired a leak in June 2022; however, water continued to infiltrate the home. Tr. at 28-29, 38-39; Complaint at 13. Again, on August 27, 2022, the Complainants experienced significant movement of the foundation, along with vibrating of the kitchen light and loud cracking and banging sounds. This resulted in the foundation block separating from the main support beam in the basement, shifting of the basement stairs, damage to the backyard retaining wall, and cracks in the yard and brick of the house. Complaint at 15.

The Complainants testified that mold has been growing in the basement since June 15, 2021, and that they have experienced negative health effects from the mold growth. An environmental assessment of the house revealed contamination with molds and toxins. Tr. at 17, 20-24, 40.

The Complainants contended that they have contacted multiple PAWC representatives without their issue being addressed. The Complainants claimed that PAWC has failed to address the damage caused by the infiltration of its water into the house, resulting in a situation where the home must be demolished and rebuilt, and its contents must be thrown away and replaced. Complaint at 16-19. Furthermore, the Complainants testified that there have been prior line leaks and breaks in the vicinity of the service location between 2018 and 2023, and that PAWC water continues to infiltrate the home. Tr. at 46-58; Complainants' Exh. No. 5.

PAWC presented the testimony of several witnesses and exhibits to rebut Ms. Derian's testimony regarding the cause of water damage to the home. I.D. at 49. First, PAWC presented the testimony of its witness, Mr. Fagan, a registered professional engineer in Pennsylvania, who performed an inspection of the service location on July 12, 2021, and issued a report for Travelers Insurance. Mr. Fagan testified that he observed certain damage and evidence of prior, failed crack repairs in the Complainants' basement; staining, paint displacement, and a blockwork gap in the garage; and indications that certain walls were subjected to lateral pressures. Mr. Fagan opined that water infiltration has long been affecting the dwelling and garage rear walls, and that water infiltration into the basement has been occurring for several years. Mr. Fagan concluded that the crack in the patio slab occurred long before the June 15, 2021 water main break, and while the retaining wall in the backyard experienced the majority of runoff water from the June 15, 2021 water main break, the damage to the other walls predated the June 15, 2021 water main break. Tr. at 83-84; PAWC Exh. No. 2 at 2-6.

Mr. Fagan completed another assessment of the service location on November 8, 2021, and noted that the cracks in the patio, blockwork, garage floor, and kitchen wall, along with the mold in the basement, and the shifting of the basement corner, were unchanged since his inspection on July 14, 2021. He also found no evidence of recent movement in the attic framing or basement foundation, nor did he find any new

cracks in the foundation walls, first floor walls, or roof framing. Further, Mr. Fagan noted that the cracks and shifting of driveway slabs, and movement of the front yard sidewalk, steps, and front entry stoop, were all visible in the July 2016 Google Maps Street View, even though the Complainants claimed that these issues were recent. Therefore, Mr. Fagan concluded that water infiltration into the Complainants' home had been occurring for several years. Tr. at 26, 85, 94; PAWC Exh. No. 3 at 3-6.

Next PAWC presented the testimony of Mr. Todd Haslup, Supervisor of Customer Compliance, who testified that PAWC's records do not show that the Complainants contacted the Company prior to June 15, 2021, to report a break or leak, or express any concerns about the possibility of such. Mr. Haslup stated that PAWC's records do show that the Complainants contacted PAWC in 2019, 2020, and early 2021, but only with regard to payment and billing issues. The record indicates that calls from the Complainants to PAWC regarding water leak issues are documented between April 4, 2022, and September 29, 2022, based upon PAWC's call center records. Tr. at 163-67; PAWC Exh. No. 13.

In addition, Mr. Jack Beal, Superintendent, testified that there were no main line breaks in 2018 through 2020 that resulted in PAWC's water entering the Complainants' home. According to Mr. Beal, several of the incidents identified by the Complainants as water main breaks near the service location were actually customer service line leaks or main line leaks that occurred many blocks away from the service location that could not have impacted the Complainants' property, especially since they did not affect other nearby customers' properties. Mr. Beal further testified that there were no customer complaints about water from other homes in the vicinity of the service location. In response to the Complainants' claim that the water inside the home tested positive for chlorine, Mr. Beal testified that sewer water also can contain traces of chlorine. Mr. Beal further explained that, even if a water sample contains chlorine, it does not necessarily mean that the water entered the Complainants' property as a result of

a main line leak or break, because the water could be from the storm sewer or sewer line, a break in a customer-owned service line, or it could be dirty water. Furthermore, Mr. Beal opined that a majority of the Complainants' water issues are due to rainwater because the service location is located at the bottom of a steep hill. If water is still entering the Complainants' property, Mr. Beal opined that it is not from any breaks or leaks on PAWC's mains. Moreover, Mr. Beal noted that the trench and sump pump is not installed correctly in the Complainants' basement because the sump pump sends the water to a trench instead of the street. Mr. Beal also testified that the trench, which is exposed to the air, is likely the source of the mold problem. Tr. at 174-75, 180, 183-84, 199, 208, 216-21.

Finally, Mr. Shane Rotolo, Field Supervisor, testified that he visited the Complainants' property several times to investigate their claims. Mr. Rotolo denied that he said the line on Hill Street was leaking for at least ten years, and he also denied having any record of complaints made to PAWC about water coming into the Complainants' property in 2018 through 2020. Mr. Rotolo further denied that he told Ms. Derian that a water line was most likely leaking underground. Mr. Rotolo described a field visit to the Complainants' service location on May 13, 2022, where a water sample tested positive for chlorine and equipment detected a noise on the valve at the intersection of East Miller Street and Hill Street; however, no leak was found after PAWC dug up the area. Furthermore, Mr. Rotolo testified that if water in the Complainants' basement was the result of a PAWC main leak, the water would be running to the basement continuously and would not stop. Mr. Rotolo testified that he never said the water in the Complainants' basement was PAWC water because he does not believe that to be the case. In addition, Mr. Rotolo testified that the drain in the Complainants' basement is not installed properly because it is wide open and not self-contained, which he believes is the cause of the mold issues. Moreover, Mr. Rotolo noted that he has not seen any evidence that any of the mains are leaking, nor have any other customers in the area complained about water infiltration. Like Mr. Beal, Mr. Rotolo believed that the Complainants'

water issues over the years are due to the topography of the area and where the property sits with respect to the surrounding hillsides. Tr. at 261-64, 269-72, 275-76.

III. Discussion

A. Legal Standards

Initially, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Burden of Proof

As the proponent of a rule or order, the Complainants bear the burden of proof to establish that they are entitled to the relief they are seeking in this proceeding pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainants must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainants' evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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. PUC*, 413 A.2d 1037 (Pa. 1980).

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 value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983). 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Safe, Adequate and Reasonable Service

A public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

§ 1501. Character of service and facilities

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 interruptions or delay. Such service and facilities shall be in conformity

with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa.C.S. § 1501.

In addition, the Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 of the Public Utility Code unless it finds that a utility has violated a duty to render reasonable and reliable service. *W. Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984). Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.

Re Metro. Edison Co., 80 Pa. P.U.C. 663, 672 (1993). However, a public utility is obligated to provide service that is reasonable and adequate. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. 20066608 (Order entered December 21, 2007).

The requirement to render reasonable service applies to all aspects of a utility's service to customers. A utility's response to, and investigation of, customer complaints also must be reasonable and adequate. *Thurby v. W. Penn Power Co.*, Docket No. C-2011-2254048 (Final Order entered April 4, 2013).

B. The ALJ's Initial Decision

ALJ DeVoe made 223 Findings of Fact and reached 15 Conclusions of Law. I.D. at 6-39, 75-77. The Findings of Fact and Conclusions of Law are incorporated

herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In the Initial Decision, ALJ DeVoe dismissed the Complaint, finding that the Complainants failed to present substantial evidence to meet their burden of proof that PAWC violated a statute, Commission Regulation, order, or tariff provision. I.D. at 1, 70, 75, 78. The ALJ found that the evidence presented does not establish that the Complainants reported any water infiltration issues at their property prior to June 15, 2021. The ALJ also noted that PAWC's records do not show that any other nearby customers called to report water infiltration issues during the period of 2018-2020, which would be reasonable to expect if such issues were occurring. *Id.* at 70-71.

While the Complainants' property appears to have been subject to water infiltration issues for some time, the ALJ found that the evidence supports that PAWC has acted reasonably in addressing the Complainants' concerns. The ALJ noted that PAWC has timely repaired all leaks and breaks that have occurred in the area, sent crews out to the service location multiple times and performed work to repair a leak that did not directly result in water damage to the Complainants' property, and removed a portion of the line near the Complainants' home. The ALJ concluded that there is no evidence to support that the water the Complainants claim has been entering their home since 2018 is from an unrepaired PAWC water main because it is neither flowing continuously, nor are other customers contacting PAWC regarding water infiltration issues. The ALJ found that PAWC has reasonably exhausted all avenues to detect and prevent a leak. Moreover, the ALJ reasoned that, based on the testimony of PAWC's witnesses, it is reasonable to conclude that the water issues experienced by the Complainants are likely caused by water flowing down the hills and into the Complainants' backyard. I.D. at 71-74.

Finally, the ALJ dismissed the Complainants' request for monetary damages for alleged damage to their home and property resulting from water main leaks from PAWC's facilities because the Commission lacks the authority to order such relief. I.D. at 75.

C. The Complainants' Exceptions and PAWC's Replies

In their Exceptions, the Complainants state that they disagree with the ALJ's Initial Decision. Subsequently, they offer six Exceptions to support why the ALJ's Initial Decision should be reversed and revisited. Exc. at 2.

In their Exception No. 1, the Complainants argue that PAWC failed to comply with an Interim Order by not scheduling a mediation session with the assigned Mediator. Rather, the Complainants aver that PAWC disregarded the Interim Order by making a "rushed, end of the business day phone call" with Ms. Derian. Exc. at 2.

In reply to the Complainants' Exception No. 1, PAWC states that the Interim Order did not mandate scheduling a mediation session. Rather, PAWC avers that the Interim Order directed the Parties to attempt to resolve the Complaint themselves, and that the Parties are entitled to a hearing to resolve the Complaint. PAWC submits that requesting a hearing after an initial call with the Complainants did not violate the Interim Order. R. Exc. at 3-4.

In their Exception No. 2, the Complainants disagree with Findings of Fact Nos. 48 through 75³ in the Initial Decision regarding the opinions of PAWC's witness, Mr. Fagan. The Complainants state that they have received very different opinions from

³ I.D. at 12-16.

various construction companies detailing the cause and repair of damages, as shown in the Complainants' Exhibit No. 5. Exc. at 2.

PAWC, in reply to the Complainants' Exception No. 2, states that this Exception consists solely of a statement that the Complainants disagree with the findings of the Company's witness, Mr. Fagan, who is a professional engineer that made two site visits to the service location and prepared two detailed reports following the June 15, 2021 water main break. PAWC argues that the Complainants' Exhibit No. 5 was not prepared by an engineer and is, rather, a timeline of events prepared by the Complainants. PAWC further notes that no engineer or other professional expert testified on behalf of the Complainants. PAWC contends that the Complainants' Exception No. 2 does not provide any basis to modify or reverse the Initial Decision. R. Exc. at 4.

In their Exception No. 3, the Complainants disagree with the Initial Decision's Finding of Fact No. 120,⁴ which states that a PAWC crew member did not see any running water in the Complainants' basement, and that it was raining at the time. The Complainants aver that this statement is not true, and that Finding of Fact No. 121⁵ contradicts the PAWC crew member's statement because he performed a field test of the water in the Complainant's basement. The Complainants contend that Finding of Fact Nos. 120 and 121 are contradictory because Finding of Fact No. 121 states that there was no water in the basement. Exc. at 2.

In reply to the Complainants' Exception No. 3, PAWC argues that Finding of Fact Nos. 120 and 121 are not contradictory. PAWC avers that Finding of Fact No. 120 correctly confirmed that the PAWC employee did not observe any running water

⁴ *Id.* at 24.

⁵ *Id.*

in the basement, and this statement is not inconsistent with the ability of the employee to take a sample of the water, that was standing in the basement, for testing. R. Exc. at 4.

The Complainants, in their Exception No. 4, take issue with the Initial Decision's Finding of Fact No. 147,⁶ which states that during PAWC's witness, Mr. Rotolo's, visit to the service location on May 20, 2022, Ms. Derian obtained water from deep in the basement trench; however, Mr. Rotolo could not confirm the source of that water or how long it had been there. The Complainants aver that Mr. Rotolo collected the water "bubbling fresh from the foundation wall" with his equipment. The Complainants further argue that three water sample collections were obtained by PAWC employees with their equipment. Exc. at 2.

PAWC, in reply to the Complainants' Exception No. 4, states that the location from where the water sample was taken on May 20, 2022, was addressed by PAWC's witness, Mr. Rotolo, on the record, where he explained that he could not confirm the source of the water in the trench or how long it had been there. R. Exc. 4-5 (citing Tr. at 270). PAWC confirmed that, although it took water samples from inside the house, Mr. Rotolo could not confirm the source of the water that was in the basement trench/drain. *Id.* at 5.

In their Exception No. 5, the Complainants appear to disagree with the Initial Decision's Findings of Fact Nos. 159 through 161.⁷ The Complainants state: "August 4, 2022 visit by Mr. Rotolo to specifically to make both myself and my husband aware that they were confident it was PAWC water and gave Us his cell phone number to keep us readily apprised of the work situation to stop the infiltration of PAWC water into our property." Exc. at 2.

⁶ I.D. at 28.

⁷ *Id.* at 30.

In reply to the Complainants' Exception No. 5, PAWC submits that Finding of Fact Nos. 159 through 161 are supported by testimony in the record by PAWC's witness, Mr. Rotolo, and that Mr. Rotolo rejected the allegation that the water at the service location was PAWC's water. R. Exc. at 5 (citing Tr. at. 272).

In their Exception No. 6, the Complainants disagree with the Initial Decision's Finding of Fact No. 211,⁸ which states that the Complainants' sump pump sends water to the trench in the basement, rather than sending it to the street. The Complainants aver that this statement is absolutely not true because the sump pump withdraws the water as demonstrated in the Complainants' Exhibit Nos. 11 through 11F. Exc. at 3.

PAWC, in reply to the Complainants' Exception No. 6, argues that Finding of Fact No. 211 is consistent with the detailed description of the configuration of the sump pump and trench as reflected in PAWC witness, Mr. Fagan's, initial engineering report and the photos included therein. R. Exc. at 5 (citing PAWC Exh. No. 2).

D. Disposition

Based upon our review of the record, we agree with the ALJ that the Complainants did not meet their burden of proving that PAWC violated a statute, Commission Regulation, order, or tariff provision. We also find that the Complainants' arguments in their Exceptions, which mainly appear to be statements of disagreement with the findings of the ALJ, provide no valid basis for modifying or reversing the Initial Decision. Therefore, we shall deny the Exceptions consistent with the following discussion.

⁸ I.D. at 37.

With respect to the Complainants' Exception No. 1, we find that their argument, that PAWC did not properly schedule a mediation session with them in violation of the Interim Order, is without merit. The Interim Order directed the Parties to attempt to resolve the matter themselves and hold a conference about resolving the case. *See* August 2, 2023, Interim Order at 1. Counsel for PAWC and Ms. Derian had an initial telephone call to discuss this matter. Based upon that telephone call, PAWC indicated that there did not appear to be an opportunity to reach a compromise in this case due to the different views of the Parties; therefore, the request that this case be scheduled for a hearing did not violate the Interim Order. R. Exc. at 3-4; Tr. at 6. Although the Commission encourages mediation if parties cannot reach an agreement through the resolution conference, the parties are entitled to a hearing if they cannot resolve the complaint on their own. The telephone call referenced above satisfied the directive in the Interim Order to discuss and attempt to resolve this case. We agree with PAWC that, if such a discussion is unsuccessful, requesting that the case be scheduled for a hearing did not violate the Interim Order. Therefore, we shall deny the Complainants' Exception No. 1.

Regarding the Complainants' Exception Nos. 2-6, we find them to be general statements of disagreement with several of the ALJ's Findings of Fact and, also, to be without merit. Specifically, the Complainants disagree with the Initial Decision's Finding of Fact Nos. 48-75, 120, 147, 159-61, and 211. The Complainants simply do not agree with certain statements and opinions included in various Findings of Fact, or they offer restatements of previous arguments made before the ALJ. However, these Exceptions fail to contain anything further to support the modification or reversal of the ALJ's Initial Decision.

The ALJ, after presiding over the testimony of the witnesses at the hearing, diligently and thoroughly evaluated the testimony and evidence offered by each Party, as well as the record generated, in this proceeding, and carefully formulated Findings of

Fact based on the evidence supported by testimony in this case and drew reasonable conclusions based upon the record. Therefore, based on our review of the record, and without any additional support in the Exceptions to persuade us to modify these Findings of Fact, we find no reason to disturb the ALJ's Findings of Fact and will adopt them without further comment. Accordingly, we shall deny the Complainants' Exception Nos. 2, 3, 4, 5, and 6.

While we sympathize with the Complainants regarding the water issues that their property has appeared to experience and the health concerns and structural damage to their home, the record in this proceeding does not support a finding that PAWC has failed to provide safe, adequate, and reasonable service, as required by 66 Pa.C.S. § 1501. We agree with the ALJ that the evidence presented does not establish that the Complainants reported any water infiltration issues at the service location prior to June 15, 2021. Also, PAWC's records do not show that any other customers in the vicinity called to report water infiltration issues between 2018 and 2020. Furthermore, the record shows that the Complainants installed a sump pump and trench in the basement in 2018, which appears to have been installed incorrectly, and which may be exacerbating the issues being experienced by the Complainants. I.D. at 71; Tr. at 15, 180, 184, 221.

The record also includes expert testimony and evidence, based on two inspections of the property, that, with the exception of some damage to a retaining wall in the backyard, supports that the damage alleged by the Complainants to have occurred since June 15, 2021, actually occurred prior to that date. I.D. at 50-51; PAWC Exh. No. 2 at 5. The Complainants did not provide testimony or evidence from any independent professional to rebut the Company's expert witness. In fact, the Complainants offered no professional or expert testimony to establish that the water issues at the service location were caused by PAWC mains leaking. The Complainants also failed to provide any proof that water from a PAWC main entered their property,

other than water from the main break on June 15, 2021, which caused some damage to the backyard retaining wall. With respect to several other water main breaks identified by the Complainants in the general area of their home over the past several years, the record revealed that many of these main breaks were not in the vicinity of the service location, and the ones that were nearby could not have caused water infiltration to the Complainants' property. *See* I.D. at 57-62.

Moreover, there is no evidence that the water issues that the Complainants claim to have affected their home since 2018 is from an unrepaired PAWC water main. No other nearby customers have complained about water infiltration issues. Based on the record evidence, we agree that PAWC has reasonably exhausted all avenues to detect and prevent such a leak. In addition, based on the expert testimony of PAWC's witnesses, we agree with the ALJ that it is reasonable to conclude that the water issues being experienced by the Complainants likely relate to the location of their property, which sits downhill of two hills with a steep grade behind the backyard, where water can flow down the hills and into the Complainants' yard. There is no evidence that would support a conclusion that the ongoing water issues at the service location are caused by PAWC. *See* I.D. at 74.

In addition, the record supports that PAWC has been reasonably responsive to the multiple contacts from the Complainants following the June 15, 2021, water line break. PAWC representatives have acted reasonably by timely responding to the service location multiple times, conducting inspections and field tests, and opening a claim with Travelers Insurance regarding the damage to the retaining wall caused by the break on June 15, 2021.

Therefore, we find that the ALJ properly evaluated the record generated in this proceeding and correctly concluded that the Complainants did not provide substantial

evidence that PAWC failed to provide safe, adequate, and reasonable service in this instance.⁹

IV. Conclusion

Based upon our review of the record, as well as the ALJ's Initial Decision and the Exceptions filed and the Replies thereto, we shall deny the Complainants' Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Ronald and Sheila Derian, filed on August 22, 2024, to the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on August 2, 2024, are denied.


2. That the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued August 2, 2024, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint of Ronald and Sheila Derian, filed on June 14, 2023, at this docket, is dismissed, consistent with this Opinion and Order.

⁹ In addition, we note that the Complainants brought this Complaint for the purpose of recovering monetary damages. In the Initial Decision, the ALJ correctly explained that it is well-established under Pennsylvania law that the Commission does not have the power to award money damages. I.D. at 75 (citing *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978)). Accordingly, the claims raised in the Complaint requesting monetary damages for alleged damages to the Complainants' home and property must be dismissed because the Commission lacks the authority to order such relief.

4. That this proceeding shall be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 20, 2025

ORDER ENTERED: February 20, 2025