

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Margaret Collins	:	
	:	
v.	:	F-2017-2628770
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

Margaret Collins (Complainant or Ms. Collins) filed a formal complaint before the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (Company or Respondent) alleging the existence of incorrect charges on her bill. This decision dismisses the formal complaint for failure of Complainant to meet her burden of proof.

HISTORY OF THE PROCEEDING

On September 27, 2017, Margaret Collins filed a formal complaint (complaint) against Pennsylvania-American Water Company, alleging the existence of incorrect charges on her bill and that payments made by Complainant in excess of \$2,315.90 were not credited to her account.

On November 1, 2017, Respondent filed an answer and new matter to the complaint. Respondent admitted that it acquired the assets of the Scranton Sewer Authority (Authority) in December of 2016 and averred that any disputes related to charges or liens imposed by the Scranton Sewer Authority in approximately 2004 are beyond the Commission's

jurisdiction. Respondent denied the remaining material averments set forth in the complaint. In its new matter, Respondent averred that the Commission lacks jurisdiction over municipal liens imposed pursuant to the Municipal Claims and Tax Liens Act, pursuant to *SBG Management Services v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered December 8, 2016). Respondent further averred that the Commission does not have jurisdiction over claims made pursuant to consumer protection statutes or over claims for refunds of utility charges made more than four years prior to the date of a complaint pursuant to 66 Pa.C.S. § 1312.

On November 21, 2017, Complainant filed a “Response To Answer And New Matter”, essentially reiterating the averments set forth in the complaint.

On May 18, 2018, a hearing notice was issued which scheduled the initial telephonic hearing for Monday, July 2, 2018 at 10:00 a.m. On May 23, 2018, the undersigned presiding officer issued a prehearing order, which set forth the procedural requirements for a formal hearing before the Commission.

On July 2, 2018, the undersigned presiding officer convened the initial telephonic hearing as scheduled. Complainant appeared *pro se* and testified on her own behalf. Complainant offered five exhibits marked as Complainant Exhibits A, A-1, B, C and D, which were admitted into evidence.

Respondent was represented by Michael A. Gruin, Esquire. Attorney Gruin presented the testimony of one witness, Tawana Dean, and offered one exhibit which was marked as Respondent Exhibit 1 and admitted into evidence. The hearing was concluded on July 2, 2018. At the hearing, various issues were raised, including whether the Commission has jurisdiction to adjudicate some or all of the claims advanced by Complainant and the applicable statute of limitations.

On July 9, 2018, an interim order was entered permitting the parties to file briefs in this matter on or before September 28, 2018.

The transcript from the evidentiary hearing was received by the undersigned presiding officer on July 19, 2018.

The undersigned presiding officer received a brief from Complainant on September 27, 2018. Respondent filed its brief on September 28, 2018. The record closed on September 28, 2018, upon receiving Respondent's brief.

For the reasons set forth below, the complaint will be dismissed.

FINDINGS OF FACT

1. Complaint is Margaret Collins who resides at 224 North Hyde Park Avenue, Scranton, Pennsylvania (service address or service location). Tr. 14.

2. Respondent is Pennsylvania-American Water Company, a public utility that has provided water service to Complainant since 2001 and wastewater service to Complainant since December of 2016. Tr. 66-67.

3. In 2016, Respondent entered into an agreement to acquire essentially all of the sewer and wastewater treatment assets of the Scranton Sewer Authority, which was approved by the Commission by order entered on October 19, 2016, at Docket No. A-2016-2537209. Tr. 67.

4. The acquisition closed on December 29, 2016. Respondent purchased assets, but did not purchase any liabilities or liens from the Scranton Sewer Authority. Tr. 71.

5. Upon closing the Scranton Sewer Authority acquisition, a balance of \$325.67 was transferred to Complainant's account with Respondent. Tr. 68.

6. Subsequently, Respondent issued a courtesy credit adjustment to Complainant in the amount of \$325.67, the full amount of the transfer. Tr. 68.

7. Respondent did not assume any liens that the Scranton Sewer Authority imposed on customers for past delinquent accounts. Tr. 68.

8. Respondent does not own or assert any liens on Complainant's property. Tr. 68.

9. Respondent did not issue any bills on behalf of the Scranton Sewer Authority for wastewater services prior to the completion of the acquisition. Tr. 68-69.

10. Respondent has no plans to place a lien on Complainant's property. Tr. 69.

11. Respondent did not serve as the private manager or in any way manage the Scranton Sewer Authority prior to the acquisition. Tr. 69.

12. Following Respondent's acquisition of the Scranton Sewer Authority's assets in December of 2016, Respondent was only able to gain limited access to information for customer account histories. Tr. 70.

13. In approximately March of 2017, Complainant contacted Respondent seeking information about the calculation of her sewage bill. Tr. 23.

14. In response to the request from Complainant, Respondent provided Complainant with an account history report indicating an outstanding balance for \$1,336.14. Tr. 22, 70.

15. The information from the report was received by Respondent from the Scranton Sewer Authority. Tr. 70.

16. Respondent is not claiming that Complainant owes Respondent \$1,336.14. Tr. 70.

17. The current amount owed by Complainant to Respondent, at the time of the hearing, was \$23.23. Tr. 65, 70-71.

18. The outstanding balance represents a bill issued to Complainant on June 19, 2018, which is not contested. Tr. 61-62, 66.

19. Complainant is not disputing any charges from Respondent for water service provided to Complainant. Tr. 61.

20. Complainant contends that her water service was terminated in 2000 and 2001 by or on behalf of the Scranton Sewer Authority for failure to pay a water or sewage bill. Tr. 16, 33-34.

21. Complainant contends that after receiving a notice from the Scranton Sewer Authority indicating that her service would be terminated, she paid someone associated with the Authority over \$2,250.00 to have her water service reconnected, although Complainant contends she did not use \$2,250.00 worth of water. Tr. 16, 18, 20, 33-34.

22. All of the payments in question totaling approximately \$2,250.00 were made to the Scranton Sewer Authority. Tr. 27.

23. Complainant was represented by legal counsel during her dispute with the Authority in 2000 and 2001. Tr. 26, 28.

24. Complainant believes that liens were filed against her property in 2000 or 2001 in the amount of \$3,242.92 by the Authority. Tr. 40.

25. Complainant contends that Respondent should be responsible for removing the liens and paying the interest that has accumulated on the liens. Tr. 38-40.

26. Complainant does not dispute any charges from Respondent for wastewater services from January 2017 to present. Tr. 62.

DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the “burden of proof.” “Burden of proof” is a duty to establish a fact by a “preponderance of the evidence.” The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). In other words, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957) *cert. denied*, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a “more likely than not” inquiry. *Commonwealth v. \$6,425 Seized From Esquilin*, 583 Pa. 544, 555, 580 A.2d 523, 529 (2005).

Upon the presentation by a complainant of a *prima facie* case, i.e., evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer 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. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa.Cmwlt. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence 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.Cmwlt. 2001).

Claims related to incorrect charges on Complainant's bills

In her complaint, Complainant generally asserts the existence of incorrect charges on her bill and that payments made by Complainant in excess of \$2,315.90 were not credited to her account.

At the hearing, Complainant testified that she is not disputing any charges from Respondent for water service provided to Complainant. Complainant contends that her water service was terminated in 2000 and 2001 by or on behalf of the Scranton Sewer Authority for failure to pay a water or sewage bill. She alleged that after receiving a notice from the Scranton Sewer Authority indicating that her service would be terminated, she paid someone associated with the Authority over \$2,250.00 to have her water service reconnected, although Complainant contends she did not use \$2,250.00 worth of water. According to Complainant, all of these payments were made to the Scranton Sewer Authority.

In approximately March of 2017, Complainant contacted Respondent seeking information about the calculation of her sewage bill. In response to a request from Complainant, Respondent provided Complainant with an account history report indicating an outstanding balance of \$1,336.14. The information from the report was received by Respondent from the Scranton Sewer Authority. Complainant contends that Respondent should make reimbursement to her of \$250.50 allegedly paid to the Authority for sewage service in 2017¹ because that was not credited to her account after the acquisition by Respondent.

Respondent has provided water service to Complainant since 2001 and wastewater service to Complainant since December 29, 2016. In 2016, Respondent entered into an agreement to acquire essentially all of the sewer and wastewater treatment assets of the Scranton Sewer Authority, which was approved by the Commission. The acquisition closed on December 29, 2016. Respondent did not purchase any liabilities or liens from the Scranton Sewer Authority, but only assets.

¹ See Tr. pp. 45-46.

Upon closing the Authority acquisition, a balance of \$325.67 was transferred to Complainant's Pennsylvania-American Water Company account and Respondent subsequently issued a courtesy credit adjustment to Complainant in the full amount of the transfer.

At the hearing, Respondent established that it did not issue any bills on behalf of the Scranton Sewer Authority for wastewater services, prior to the completion of the acquisition on December 29, 2016.

Respondent did not issue any bills on behalf of the Scranton Sewer Authority for wastewater services, prior to the completion of the acquisition and did not serve as the private manager or in any way manage the Authority prior to the acquisition.

Respondent further established that, following its acquisition of Authority assets in December of 2016, Respondent was only able to gain limited access to information for customer account histories. In approximately March of 2017, Complainant contacted Respondent seeking information about the calculation of her sewage bill. In response to the request from Complainant, Respondent provided Complainant with an account history report indicating an outstanding balance for \$1,336.14, based upon the report Respondent received from the Authority.

Respondent's witness, Tawana Dean, a regulatory compliance manager for the Company, testified that Respondent was not asserting a claim against Complainant in the amount of \$1,336.14.

The evidence further established that, at the time of the hearing, Complainant had an outstanding balance of \$23.23, which was not contested.

Complainant testified she was not disputing any charges from Respondent for water service provided, nor was she disputing any charges from Respondent for wastewater services from January 2017 to the time of the hearing.

Complainant also testified as to her belief that liens were filed against her property in 2000 or 2001 in the amount of \$3,242.92 by the Authority and that she would be responsible for the costs of removing the liens and paying the interest on the liens. Complainant further testified that she paid \$250.50 to the Authority throughout 2016 for sewage charges, which were not credited to her account.

Complainant concluded that Respondent should make the reimbursement to her for the charges paid by Complainant and that Respondent should be responsible for the liens and interest on the liens for failing to provide Complainant with a true and complete accounting of what she owed after the acquisition of the assets of the Authority.²

Section 1501 of the Public Utility Code (Code), 66 Pa.C.S. § 1501, requires all public utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make all repairs, changes, improvements, etc., to its service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public. As defined, in pertinent part, in Section 102 of the Code, 66 Pa.C.S. § 102:

“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....

Absent proof by a preponderance of the evidence that Respondent violated the provisions of 66 Pa.C.S. § 1501, the Commission has no authority to require any action by Respondent. *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 478 A.2d 947 (Pa.Cmwlth. 1984).

In determining whether Respondent has violated the provisions of 66 Pa.C.S. § 1501, it must be understood that what is required is adequate, efficient, safe, and reasonable

² To the extent Complainant is alleging Respondent violates the Public Utility Code, such claims would be barred by the statute of limitations at 66 Pa.C.S.A. § 3314.

service and facilities, not “perfect service.” *Manuel A. Biason v. Metropolitan Edison Company*, Docket No. C-00004450 (Opinion and Order entered December 19, 2001).

Complainant avers there were incorrect charges on her bill. In her Complaint, Ms. Collins did not provide dates or any explanation regarding the charges from Respondent that she believed were incorrect, nor did she attach any bills which were alleged to contain incorrect charges. Furthermore, no evidence was presented at the hearing of any incorrect charges on Complainant’s billing statements provided by Respondent.

“Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, R-00994808 (Opinion and Order entered March 3, 2000). Complainant has not established a *prima facie* case that there were incorrect charges on any bills Complainant received from Respondent. Complainant did not present any credible evidence to establish that Respondent improperly transferred any account balance from the Authority to Complainant’s account with Respondent.

The evidence and testimony presented by Complainant demonstrate that her complaint relates, at least in part, to a dispute with the Scranton Sewer Authority over wastewater charges from the early 2000’s, and a lien placed on her home by the Scranton Sewer Authority. Complainant confirmed that she is not disputing any of Respondent’s charges to her for water or wastewater service.³

Complainant presented no evidence to support a finding of any violation by Respondent, and accordingly, she failed to meet her burden of proving any violation of a Commission rule, regulation or order or any entitlement to relief.

³ The Commission has previously ruled that it does not have jurisdiction over municipal liens imposed pursuant to the Municipal Claims and Tax Liens Act. See *SBG Management Services v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered December 8, 2016, Reconsideration denied by Orders entered May 18, 2018 (*May 18 Order*) and August 23, 2018).

CONCLUSION OF LAW

1. The party filing the complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

2. “Burden of proof” means a duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d (1950).

3. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.

4. Complainant has the burden of proof and failed to carry that burden. 66 Pa.C.S. § 332(a).

5. The Commission lacks jurisdiction over municipal liens imposed pursuant to the Municipal Claims and Tax Liens Act. *SBG Management Services v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered December 8, 2016).

6. The Commission does not have jurisdiction over claims made pursuant to consumer protection statutes or over claims for refunds of utility charges made more than four years prior to the date of a complaint. 66 Pa.C.S. § 1312.

7. No evidence was presented to indicate Complainant’s account balance is incorrect.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Margaret Collins v. Pennsylvania-American Water Company at Docket No. F-2017-2628770 is denied.
2. That the Secretary's Bureau shall mark Docket No. F-2017-2628770 closed.

Date: December 3, 2018

/s/
Jeffrey A. Watson
Administrative Law Judge