

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lisa Seamon	:	
	:	
v.	:	C-2018-3004588
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her water utility regarding the utility’s charges for wastewater. The complaint alleges that the customer should not be charged a wastewater usage fee for water the customer uses but does not dispose of into the wastewater system. This decision denies the complaint as the customer has failed to demonstrate that the utility’s wastewater charges are unreasonable or otherwise violate the Public Utility Code, a Commission order, regulation or Commission-approved tariff.

HISTORY OF THE PROCEEDING

On August 21, 2018, Lisa Seamon (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (Respondent) at Docket Number C-2018-3004588. Complainant indicated that she believed Respondent’s wastewater usage charge was unreasonable because it was applied to all water utilized by her household – including water the Complainant used to fill her swimming pool and did not dispose of into the wastewater system. Complainant asserted that she was

therefore being improperly billed for wastewater. The Complainant was seeking a refund of \$48.15 in wastewater usage charges for the water used to fill her swimming pool based upon her estimate of the number of gallons of water she had used to fill it. The Complainant also requested that the Respondent's tariff regarding wastewater usage charges be changed so that customers who utilize water outside during the summer months are not charged a wastewater fee for that water.

On October 2, 2018, Respondent filed an answer to the complaint. In its answer, Respondent either admitted or denied the various averments of the complaint. Respondent specifically denied that the Complainant had been incorrectly billed and asserted that wastewater billing had been in compliance with Respondent's Commission-approved tariff.

On December 7, 2018, the Commission issued a telephonic hearing notice assigning this matter to me and scheduling it for hearing on January 16, 2019.¹ A prehearing order had previously been issued on October 16, 2018, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.²

On January 10, 2019, the Complainant requested a continuance of the January 16, 2019 hearing. This request was not opposed by the Respondent. On January 16, 2019, a telephonic hearing notice was issued rescheduling this matter for February 21, 2019.

The hearing was conducted as scheduled on February 21, 2019. The Complainant appeared *pro se* and sponsored five exhibits which were admitted into the record without objection. Attorney Michael Gruin represented the Respondent, which presented two witnesses who sponsored two exhibits that were admitted into the record without objection. The initial hearing resulted in a transcript of 89 pages.

¹ This matter was initially scheduled for a hearing with Administrative Law Judge (ALJ) Haas on November 26, 2018 but was cancelled. The hearing was rescheduled to January 16, 2019 and assigned to me.

² ALJ Haas issued a prehearing order on October 16, 2018 in anticipation of the original November 26, 2018 hearing date.

The record closed on February 21, 2019, at the conclusion of the initial hearing. For the reasons set forth below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Lisa Seamon.
2. The Respondent is Pennsylvania-American Water Company.
3. The Complainant resides at 3100 Atlanta Avenue, Scranton. N.T. 4.
4. The Respondent purchased the Scranton Sewer Authority and became both the Complainant's water and wastewater utility in 2017. N.T. 70.
5. The Respondent operates under a wastewater tariff which was approved by the Commission in Docket No. R-2017-2595853 on December 7, 2017. N.T. 36.
6. Respondent's Exhibit No. 1 (PA-American Ex. No. 1) is a current copy of the wastewater tariff governing the Complainant's service. N.T. 36.
7. Page 11.4 of the tariff provides for residential wastewater charges of a \$19.50 per month service charge and a usage charge of \$0.6173 per hundred gallons in the Scranton service area. N.T. 38, PA-American Ex. No. 1.
8. Residential wastewater flows are not metered. N.T. 40.
9. Residential wastewater usage charges are based on a customer's metered water usage. N.T. 39-40.
10. The Commission-approved wastewater usage charge in the Respondent's tariff is based upon the Respondent's revenue requirements and recognizes that a customer's water usage will not exactly correspond to the customer's wastewater usage. N.T. 40.

11. In 2018 the Complainant estimates that she used 7,800 gallons of water to fill her swimming pool for the summer season. N.T. 22-23.

12. After filling her pool, the Complainant received her water/wastewater bill which included wastewater usage charges for the gallons of water she utilized to fill the pool. N.T. 14.

13. The Complainant estimated that approximately \$48 in wastewater usage charges were included in this bill for the water she utilized to fill her pool. N.T. 14.

14. In June of 2018 the Complainant began to make contact with the Respondent to have the wastewater usage charges for the pool water removed from her bill. N.T. 14, 18-19.

15. The Complainant believed that since the water used to fill the pool would not be discharged into the wastewater system, wastewater usage charges should not be paid on those gallons of water. N.T. 16.

16. In 2017, the Complainant had contacted the Respondent with the same request after filling her pool twice that year. N.T. 13.

17. In response to the Complainant's concerns in 2017, the Respondent gave the Complainant a credit adjustment to her wastewater bill as a good will gesture. N.T. 70.

18. The Respondent however refused to provide the Complainant with a similar credit in 2018. N.T. 70.

19. The Respondent based this refusal on its tariff language relating to wastewater usage charges based on metered water usage and that providing such additional credit to the Complainant would be discriminatory to other customers who may also have a swimming pool. N.T. 39, 43.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish her case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet her burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

The Complainant has argued that Respondent's wastewater tariff provision which specifies that wastewater usage charges are calculated using the amount of metered gallons of water passing through her water meter is unreasonable. Complainant asks that the Commission direct Respondent to refund \$48.15 in wastewater usage charges to her. The Complainant bases this amount on her estimate of the number of gallons of water she utilized to fill her swimming pool in 2018 and the tariff's wastewater usage charge on that water which she was required to pay under the tariff.³ Complainant argues that it is unfair for her to be charged a wastewater usage charge for the water in her pool when it will not be placed into the wastewater system. The Complaint does not dispute the meter reading for the billing period relevant to when she filled her pool in the spring of 2018. The Complainant also does not dispute any of the other charges associated with her water or wastewater billing. The Complainant's sole issue is the reasonableness of being billed a wastewater usage charge for water which she utilizes but does not place into the Respondent's wastewater system.

The statute at 66 Pa. C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa. C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. 1977) aff'd 420 A.2d 371 (Pa. 1977); Behrend v. Bell Telephone Co., 243

³ 7,800 gals. water x \$0.6173/hundred gallons = \$48.15.

A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. Analytical Laboratory Services, Inc. v. Metropolitan Edison Co., Docket No. C-2006608 (Order entered December 21, 2007); Emerald Art Glass v. Duquesne Light Co., Docket No. C-00015494 (Order entered June 14, 2002); Re: Metropolitan Edison Co., 80 Pa. PUC 662 (1993).

In addition, a public utility's Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlth. 1997); Stiteler v. Bell Telephone Co. of Pennsylvania, 379 A.2d 339 (Pa.Cmwlth. 1977). Where a complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067, 63 (Pa.Cmwlth. 1981).

The Complainant has failed to provide evidence that the wastewater usage charge contained in the Respondent's Commission-approved tariff is unreasonable. The Respondent's witnesses credibly testified that residential wastewater flows are not metered. N.T. 40. There is therefore no way for the Respondent to accurately measure the wastewater the Complainant's household discharges into the wastewater system. Residential wastewater usage charges are therefore required to be based on a customer's metered water usage. N.T. 39-40. The Complainant was charged in compliance with this requirement. Her estimate that 7,800 gallons of water went into her pool and not into the wastewater system – and should therefore be exempt from a wastewater usage charge – is without merit.

The Respondent has further shown that the Commission-approved wastewater usage charge in the Respondent's tariff is based upon the Respondent's revenue requirements to operate its wastewater facilities and that such charges take into account that a customer's water usage will not exactly correspond to their wastewater usage. N.T. 40. This means that the Respondent's wastewater usage charge has been set at a rate which the Commission has

determined is fair and reasonable and recognizes that not all water which passes through a customer's meter is water that will be discharged into the Respondent's wastewater system. The mere fact that the Complainant does not believe that such charges should be applicable to water she uses to fill her swimming pool each summer does not demonstrate that the Respondent's wastewater charges – or tariff – are unreasonable. The Complainant has failed to meet her burden and the complaint will be dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. Pursuant to 66 Pa. C.S. § 1501, public utilities must provide reasonable and adequate service.

4. A public utility's Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; Kossmann v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlth. 1997); Stiteler v. Bell Telephone Co. of Pennsylvania, 379 A.2d 339 (Pa.Cmwlth. 1977).

5. The burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067, 63 (Pa.Cmwlth. 1981).

6. A complainant bears the burden of proving by a preponderance of the evidence that the existing rates and charges are unreasonable, unjust or in violation of a Commission regulation or order. 66 Pa.C.S. § 332(a); Duquesne Light Co. v. Pa. Pub. Util. Comm'n, 715 A. 2d 540 (Pa. Cmwlth. 1998); Schellhammer v. Pa. Pub. Util. Comm'n, 629 A. 2d 189 (Pa. Cmwlth. 1993).

7. Complainant has failed to satisfy her burden and demonstrate that Respondent's Commission-approved tariff rates are unreasonable. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067, 63 (Pa.Cmwlth. 1981).

8. Complainant has failed to satisfy her burden to demonstrate that Respondent has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Lisa Seamon against Pennsylvania-American Water Company at Docket No. C-2018-3004588 is hereby dismissed.

2. That the docket at Docket No. C-2018-3004588 is marked closed.

Date: April 18, 2019

/s/
Benjamin J. Myers
Administrative Law Judge