

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                            |   |                |
|----------------------------|---|----------------|
| John and Donna Hersca      | : |                |
|                            | : |                |
| v.                         | : | C-2020-3020883 |
|                            | : |                |
| Twin Lakes Utilities, Inc. | : |                |

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision denies a formal complaint filed by customers of a water company who averred that the water company is overcharging them on their quarterly water bill and that their water contains an excessive amount of lead. The complaint will be dismissed because the complainants failed to satisfy their burden of demonstrating that the water company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company regarding the rates charged or the quality of the water.

**HISTORY OF THE PROCEEDING**

On July 16, 2020, John and Donna Hersca filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Twin Lakes Utilities, Inc. (Twin Lakes), docket number C-2020-3020883. In their complaint, the Herscas averred that they oppose Twin Lakes' rate and amount billed because it is illegal, unreasonable and unjust in violation of the Public Utility Code. The Herscas noted that Twin Lakes is billing them \$600 quarterly for two people when the average national and state monthly water bill is only \$40 per

month. The Herscas also averred, among other things, that they do not even drink the water and therefore have to spend even more money out of pocket buying bottled water since the water in their community tested positive for high levels of lead. The Herscas requested that their rate be reduced and that they be refunded for all the past monies they have overpaid. The Herscas attached multiple documents to their complaint in support of their position.

On July 27, 2020, Twin Lakes filed an answer to the Herscas' complaint admitting or denying the averments made in the complaint. In particular, Twin Lakes admitted that it provides water service to the Herscas. Twin Lakes stated, however, that the rate and amount billed by Twin Lakes to the Herscas were calculated pursuant to the Commission's recent order approving Twin Lakes' rates. Twin Lakes also denied the relief requested by the Herscas. Twin Lakes requested that the Herscas' complaint be dismissed in its entirety with prejudice.

On July 30, 2020, the Commission issued a hearing notice establishing an initial telephonic hearing for this matter for October 6, 2020 at 10:00 a.m. and assigning me as the presiding officer.

Also on July 30, 2020, the Herscas submitted a reply to the answer filed by Twin Lakes. Since the Commission's regulations do not allow for replies to answers, the filing made by the Herscas will not be considered.

On August 4, 2020, Twin Lakes filed a motion for summary judgment. In its motion, which was accompanied by a notice to plead, Twin Lakes argued that there is no genuine issue of material fact and the complaint "constitutes no more than a backdoor attempt to re-litigate the Commission's recently concluded rate case." On August 18, 2020, the Herscas filed an answer to the motion for summary judgment filed by Twin Lakes. In their answer, the Herscas argued that Twin Lakes' motion should be denied because there are genuine issues of material fact which must be addressed in the upcoming hearing. Twin Lakes' motion was denied via order dated September 15, 2020. The order stated that, when viewing the complaint in the light most favorable to the Herscas, it appears that their complaint raises issues over which the

Commission does have jurisdiction and warrants a hearing, including whether Twin Lakes has properly billed the Herscas and whether the quality of their water violates the Public Utility Code.

The evidentiary hearing was held on October 6, 2020, as scheduled. Mr. and Mrs. Hersca appeared *pro se*. Mrs. Hersca testified and presented ten exhibits that were admitted into the record. Jay Kooper, Esquire, appeared on behalf of Twin Lakes and presented two witnesses who sponsored a total of five exhibits that were admitted into the record. A transcript of 65 pages was created.

The record in this case closed on November 5, 2020, the day the transcript was filed with the Commission. For the reasons discussed below, the Herscas' complaint will be denied.

#### FINDINGS OF FACT

1. The Complainants in this case are John and Donna Hersca.
2. The Respondent in this case is Twin Lakes Utilities, Inc.
3. The service address is 110 Sagamore Road, Shohola, Pennsylvania.
4. The Herscas use approximately 3,000 gallons of water each month. Tr. 10.
5. The Herscas do not drink tap water but buy bottled water. Tr. 10.
6. Hersca Exhibit Number 1 is the formal complaint filed by the Herscas. Tr. 12; Hersca Exh. 1.
7. Hersca Exhibit Number 2 is the Herscas' answer to the motion for summary judgment filed by Twin Lakes. Tr. 12; Hersca Exh. 2.

8. Hersca Exhibit Number 3 is the Herscas' water bill from Twin Lakes dated September 21, 2020 for a total due of \$572.85. Tr. 12; Hersca Exh. 3.

9. Hersca Exhibit Number 4 is a letter from State Representative Mike Peifer to Gladys Brown Dutrieuille, Chairman of the Commission, dated June 30, 2020. Tr. 13-14; Hersca Exh. 4.

10. Hersca Exhibit Number 5 is printouts of various internet research performed by Mrs. Hersca regarding the cost of water service in other states and the national average cost of water. Tr. 14-16; Hersca Exh. 5.

11. Hersca Exhibit Number 6 is a printout of Section 1312 of the Public Utility Code as well as copies of the Herscas' bills from Twin Lakes from September 2016. Tr. 16-17; Hersca Exh. 6.

12. Hersca Exhibit Number 7 is a printout of Section 1301 of the Public Utility Code. Tr. 21 Hersca Exh. 7.

13. Hersca Exhibit Number 8 is excerpts of "A Guide to Utility Ratemaking" by Cawley and Kennard. Tr. 21-23; Hersca Exh. 8.

14. Hersca Exhibit Number 9 is a copy of the United States Supreme Court decisions in Market St. R. Co. v. R.R. Comm'n of Ca., 324 U.S. 548 (1945) and Fed. Power Comm'n v. Hope Nat. Gas Co., 320 U.S. 591 (1944). Tr. 23-24; Hersca Exh. 9.

15. Hersca Exhibit Number 10 is a notice from the Pennsylvania Department of Environmental Protection (DEP) entitled "Important Information about Lead in Your Drinking Water" and a copy of Section 526 of the Public Utility Code. Tr. 24-25; Hersca Exh. No. 10.

16. Jamie Crespo has been employed by Middlesex Water Company in its customer service department for 15 years. Tr. 33.

17. Mr. Crespo is the billing manager responsible for ensuring that all rates that are approved by the Commission are entered into the Middlesex billing system and that all customers' bills are calculated in accordance with those Commission approved rates. Tr. 33.

18. Middlesex provides billing services to Twin Lakes. Tr. 34.

19. Twin Lakes issues bills to its customers every three months. Tr. 34.

20. Twin Lakes Exhibit Number 1 is a copy of the bill issued by Twin Lakes to the Herscas dated June 29, 2020 for a total of \$528.68. Tr. 35; TLU Exh. 1.

21. The Herscas used 8,976 gallons of water from March 28, 2020 to June 27, 2020. Tr. 36; TLU Exh. 1.

22. The Herscas' June 29, 2020 bill from Twin Lakes shows two different facility charges and two different water charges for the quarter because the Commission approved new rates effective in the middle of the billing period. Tr. 37-38.

23. Twin Lakes Exhibit Number 2 is the account financial history for the Herscas' account showing the billed amount of \$528.68 on June 29, 2020 that was paid on July 16, 2020 and the calculations that determined the amount of \$528.68. Tr. 38-41; TLU Exh. 2.

24. The facility charges and the water charges on the bill from Twin Lakes to the Herscas in Hersca Exhibit Number 3 are the same charges that were approved by the Commission in Twin Lakes' last rate case. Tr. 43.

25. Robert Fullagar is the president of Twin Lakes and is responsible for the overall supervision of Twin Lakes including the quality of water provided to Twin Lakes' customers. Tr. 46.

26. Twin Lakes is subject to the lead and copper rule in the DEP regulations and is required to monitor its system for those levels by taking samples from five locations within the system every three years. Tr. 47.

27. If any water sample taken pursuant to the lead and copper rule exceeds an "action level," Twin Lakes is required to take ten samples every six months. Tr. 47.

28. If any water sample at a specific testing location exceeds the action level it does not automatically mean the entire Twin Lakes system has tested positive for lead. Tr. 48.

29. In 2019, two samples Twin Lakes tested exceeded the action level so Twin Lakes tested again in 2020 per the DEP requirements. Tr. 48.

30. The Herscas' residence was not one of the locations tested for lead monitoring under the DEP requirements. Tr. 48.

31. Twin Lakes Exhibit Number 3 is a copy of the lead and copper rule testing results for Twin Lakes for 2010, 2013, 2016, 2019 and year-to-date 2020. Tr. 49; TLU Exh. 3.

32. From 2010-2020, a testing location came back with results indicating an exceedance of the action level amount twice in 2019 – once at 115 Beach Road and once at 133 Twin Lakes Drive. Tr. 49.

33. Twin Lakes is required to provide its customers with notice of the two exceedances. Tr. 50.

34. Twin Lakes Exhibit Number 4 is the November 13, 2019 notice from Twin Lakes to its customers. Tr. 50; TLU Exh. 4.

35. The notice Twin Lakes provided to its customers on November 13, 2019 does not indicate elevated levels of lead in the drinking water for customers as a whole. Tr. 50.

36. The service address was neither a testing location nor were there any tests that concluded that an excess level of lead was ever detected at the service address. Tr. 51.

37. A test was conducted in 2020 by Prosser Laboratories after the Herscas requested a test of the lead levels at the service address. Tr. 51.

38. The results of the test taken at the service address in 2020 by Prosser Laboratories shows that the sample was well below the lead action level. Tr. 51-52.

39. Twin Lakes Exhibit Number 5 is the September 15, 2020 test results of the lead level testing at the service address by Prosser Laboratories. Tr. 52; TLU Exh. 5.

40. At no time has the water at the service address ever tested in exceedance of the action level amount for lead. Tr. 52.

41. Twin Lakes has never violated any quality of water regulation or requirement under the Public Utility Code or the DEP lead and copper rule with respect to lead levels testing and customer notification. Tr. 53.

#### DISCUSSION

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196

(1990). “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). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, the Herscas requested that Twin Lakes immediately reduce their water rates to \$40 per month and reimburse them for “all past monies we have overpaid to them as a result of them overcharging us an unreasonable and unjust rate.” Therefore, the Herscas have the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

On appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "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 & W. 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, 166 A.2d 96 (Pa.Super. 1961); and Pa. Dept. of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa.Cmwlth.1984).

As noted above, the motion for summary judgment filed by Twin Lakes in this case was denied and the Herscas were given an opportunity to demonstrate at a hearing whether Twin Lakes has improperly billed them, whether the quality of the water provided by Twin Lakes to them violates the Public Utility Code or whether Twin Lakes has otherwise violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the

company with regard to the service provided to the Herscas. The Herscas have not made such a demonstration and, therefore, their complaint will be denied.

With regard to the Herscas' argument that Twin Lakes' billing of the Herscas was improper, Mrs. Hersca testified that they oppose Twin Lakes' rates and amount billed to them because the rates and the bills are illegal, unreasonable and unjust rates and bill amounts. Tr. 10-11. Mrs. Hersca testified that this is in direct violation of Section 1301 of the Public Utility Code which requires rates to be just and reasonable, arguing that the rates are unjust and unreasonable because they are being charged \$578 per quarter for two people who do not drink the water and use only 3,000 gallons of water a month. Tr. 11. Mrs. Hersca added that the national and state monthly average water bill is approximately \$40 per month. Mrs. Hersca requested that their rates be immediately reduced to a reasonable and just rate consistent with Section 1301 and national averages and that they be reimbursed \$4,647 representing the amount that they have overpaid Twin Lakes since September 2016 plus the amount of bottled water they have had to buy. Tr. 11-12. Mrs. Hersca also testified regarding various exhibits that she sponsored regarding, among other things, her own pleadings in this proceeding, Sections 1301 and 1312 of the Public Utility Code, internet research of rates for water service in other jurisdictions and two United States Supreme Court decisions regarding utility ratemaking. *See*, Tr. 12-24 and Hersca Exhibits 1-9.

In response, Twin Lakes presented the testimony of Jamie Crespo. Mr. Crespo is a billing manager at Twin Lakes and is responsible for ensuring that all rates that are approved by the Commission are entered into the billing system and that all customers' bills are calculated in accordance with those rates. Tr. 33. Mr. Crespo reviewed the Herscas' bill for accuracy and conformance with the rates approved for Twin Lakes by the Commission. Tr. 35. Mr. Crespo specifically referenced the Herscas' bill dated June 29, 2020 which was admitted into the record as TLU Exhibit 1. Mr. Crespo testified regarding the details of the bill and explained that in that particular bill there were two facility charges and two water charges that total up to \$528.68 because Twin Lakes' Commission-approved rates changed during the billing quarter. Tr. 36-37. Mr. Crespo testified that the Commission order approving a change in Twin Lakes' rates was issued on March 26, 2020. Tr. 38; TLU Exh. 1. Mr. Crespo provided additional testimony

regarding the specific calculations regarding the facility charge and the water charge contained on the bill. Tr. 38-41; TLU Exh. 2. Mr. Crespo concluded that the facility charges and the water charges on the monthly bill sponsored by the Herscas includes the same rates that were approved by the Commission in Twin Lakes' last rate case order. Tr. 43.

As a result, substantial record evidence demonstrates that the rates and amounts charged by Twin Lakes to the Herscas is consistent with the Commission-approved rates from Twin Lakes' most recent rate case approved by the Commission on March 26, 2020. *See, Pa. Pub. Util. Comm'n v. Twin Lakes Utils., Inc.*, Docket Nos. R-2019-3010958 (Opinion and Order entered March 26, 2020). Mrs. Hersca is correct that the Public Utility Code requires that a utility's rates must be just and reasonable. Section 1301 provides that "every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulators or orders of the commission." 66 Pa.C.S. § 1301(a). In addition, Section 1303 of the Public Utility Code provides that a public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa.C.S. § 1303. Mr. Crespo, on behalf of Twin Lakes, however, testified that the rates Twin Lakes charged to the Herscas are consistent with the Commission's order in the company's last rate case. Mr. Crespo provided significant detail confirming that the calculations on the Herscas' bill are correct and calculated according to the Commission's order in the company's last rate case.

In contrast, Mrs. Hersca has failed to present sufficient evidence that Twin Lakes is charging her anything other than Commission-approved rates. Mrs. Hersca has correctly cited to various portions of the Public Utility Code, a Utility Ratemaking Guide and Supreme Court decisions, among other things, but these are legal arguments, not evidence that demonstrate that rates charged by Twin Lakes is unjust or unreasonable. Instead, Mrs. Hersca's opinion that the rates are unjust and unreasonable does not make them so. Bald assertions, opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Order entered January 12, 2012); *citing, Pa. Bureau of Corrs. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

Likewise, the fact that Mrs. Hersca's state representative wrote a letter to the Chairman of the Commission asking the Commission's Bureau of Investigation and Enforcement to ensure that the rates being charged are just and reasonable does not mean that those rates are not just and reasonable. Tr. 13-14; Hersca Exh. 4. Mrs. Hersca testified that her representative "is acknowledging that [the rates] are unjust and unreasonable" but nothing in the letter supports that conclusion.

Similarly, Mrs. Hersca's comparison of the rates charged by Twin Lakes to the rates charged by other water companies throughout the state and throughout the country is also without merit. Since each public utility has different problems of supply, production, distribution, competition, geographic conditions, etc., there need not be and there cannot be absolute equality and uniformity of rates between utilities or between classes of service within the same utility. Phila. Suburban Transp. Co. v. Pa. Pub. Util. Comm'n, 281 A.2d 179 (Pa.Cmwlth. 1971); *see also*, Golf Resort, Inc. v. Duquesne Light Co., Docket No. C-00968158 (Opinion and Order entered April 23, 1998) ("juxtaposing the rates of two jurisdictional utilities has never been an acceptable way to prove that the rates of one utility are unlawful, unjust or unreasonable").

The appropriate time for the Herscas to raise issues regarding the level at which Twin Lakes' rates are set and whether those rates comply with the Public Utility Code and all applicable statutes and precedent was during the rate case proceeding that concluded with the Commission's order entered March 26, 2020. There is no evidence of record in this proceeding to suggest that the Herscas did not have notice and an opportunity to be heard in that proceeding regarding Twin Lakes' rates. Regardless, the Herscas cannot now attack through their own complaint the level at which Twin Lakes' rates were set in the prior rate case proceeding.

Mrs. Hersca's arguments that the rates and amounts charged by Twin Lakes are unjust and unreasonable and that she should be reimbursed for the amounts she has allegedly overpaid are without merit and will be rejected. Record evidence demonstrates that the correct rates were properly applied when determining the Herscas' bill.

With regard to the Herscas' argument that the water provided by Twin Lakes had an illegal amount of lead in it, Mrs. Hersca testified that she bought bottled water since "the water in our community at Sagamore Estates previously tested positive for high levels of lead." Tr. 10. Mrs. Hersca also sponsored Hersca Exhibit 10 that was admitted into the record which is a notice from the Pennsylvania Department of Environmental Protection (DEP) entitled "Important Information about Lead in Your Drinking Water" and a copy of Section 526 of the Public Utility Code. Tr. 24-25; Hersca Exh. No. 10. Mrs. Hersca testified that the DEP notice advised "us to buy bottled water due to the high levels of lead in our water." Tr. 24.

In response, Mr. Fullagar, the president of Twin Lakes, testified that Mrs. Hersca's testimony that the water at Sagamore Estates previously tested positive for high levels of lead is not accurate. Tr. 46-47. Mr. Fullagar explained that Twin Lakes is required by the DEP to monitor its system for lead levels by taking five samples every three years and additional samples if any sample exceeds an "action level" of 15 parts per billion Tr. 47-48. Mr. Fullagar explained the testing history since 2009 noting that, in 2019, two locations tested in exceedance of the action level triggering additional testing. Tr. 48. Mr. Fullagar referenced results of tests performed since 2010 in support of his testimony. *See*, TLU Exh. 3.

Mr. Fullagar also explained the notice Twin Lakes is required by regulation to provide when a sample rises to action level, noting the same DEP letter that Mrs. Hersca referenced in her testimony. *See*, TLU Exh. 4. Mr. Fullagar added that the notice does not state anywhere that Twin Lakes found elevated levels of lead in drinking water in the Sagamore Estates community as a whole, but only in samples. Tr. 50. Finally, Mr. Fullagar testified regarding the Herscas' request to have their residence tested for the presence of lead in the water and that the results of the test showed that the sample was well below the lead action level amount. Tr. 51-52; TLU Exh. 5.

Mrs. Hersca's argument will be rejected because she has misinterpreted the DEP notice. Although the notice is confusing because "Important Information about Lead in Your Drinking Water" is written at the top, a closer review of the notice clearly states that "Twin Lakes Utilities found elevated levels of lead in drinking water tap *samples*" and, among other

things, provides steps consumers can take to reduce the lead in their drinking water. TLU Exh. 4 (emphasis added). The notice also provides under “What happened? What is being done” that:

Samples collected on 08/18/2019 at 115 Beach Rd – Kitchen and on 09/15/2019 at 133 Twin Lake have greater than the lead action level and the 90<sup>th</sup> percentile value for our water system is also greater than the lead action level of 15 parts per billion. Twin Lakes Utilities, Inc. will be taking lead and copper samples every six months for the duration required by the PA DEP.

TLU Exh. 4. In addition, Mr. Fullagar testified regarding these matters during the hearing. Tr. 50. The notice also states several methods of obtaining additional information. TLU Exh. 4. None of these statements contained in the DEP notice indicates that there is a high level of lead at the service address or that the Herscas must buy bottled water.

Furthermore, although the Commission has jurisdiction over some issues related to the quality of water provided by regulated public utilities in Pennsylvania, the Commission’s primary jurisdiction over water utilities in Pennsylvania pertains to the provision of water service. *See*, 52 Pa.Code Ch. 65. Any confusion about the specific language of the notice is beyond the jurisdiction of this Commission. Ultimately, Mrs. Hersca’s arguments do not constitute evidence that Twin Lakes violated the Public Utility Code, a Commission order or regulation or a Commission approved tariff of the company. In addition, when the Herscas requested to have the water at their residence tested, such test revealed no lead action level. *See*, Tr. 25; TLU Exh. 5. Therefore, the Herscas have not presented substantial evidence demonstrating that the lead levels in the water provided by Twin Lakes was too high or that the Herscas should be reimbursed for bottled water they purchased.

The Herscas have otherwise not presented any evidence that demonstrates that Twin Lakes has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided to them.

In conclusion, the Herscas have failed to demonstrate that Twin Lakes violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of

the company with regard to either the billing rates and amounts on the Herscas' water bills or with regard to the quality of water provided to the Herscas by Twin Lakes. Twin Lakes has demonstrated that the bills provided to the Herscas were consistent with the rates approved by the Commission in Twin Lakes' last rate case and that no errors were made on the bills presented. In addition, although some samples taken in the residential community where the Herscas live exceeded lead action levels, there is no evidence of high levels of lead at the service address and the Herscas misconstrued the notice Twin Lakes was required by the DEP to provide. Therefore, the Herscas' complaint will be denied.

### CONCLUSIONS OF LAW

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

2. 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).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "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).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going

forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

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

8. "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 & W. 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.Super. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Pub. Welfare, White Haven Ctr., 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

9. Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulators or orders of the Commission. 66 Pa.C.S. § 1301.

10. A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa.C.S. § 1303.

11. Bald assertions, personal opinions or perceptions do not constitute evidence. Rivera v. Phila. Gas Works, Docket No. C-2010-2164222 (Order entered January 12, 2012); *citing*, Pa. Bureau of Corrs. v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

12. Since each public utility has different problems of supply, production, distribution, competition, geographic conditions, etc., there need not be and there cannot be absolute equality and uniformity of rates between utilities or between classes of service within the same utility. Phila. Suburban Transp. Co. v. Pa. Pub. Util. Comm'n, 281 A.2d 179

(Pa.Cmwlth. 1971); *see also*, Golf Resort, Inc. v. Duquesne Light Co., Docket No. C-00968158 (Opinion and Order entered April 23, 1998) (“juxtaposing the rates of two jurisdictional utilities has never been an acceptable way to prove that the rates of one utility are unlawful, unjust or unreasonable”).

13. The Herscas have failed to satisfy their burden to demonstrate that Twin Lakes has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the billing or water quality.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by John and Donna Hersca against Twin Lakes Utilities, Inc. on July 16, 2020 at docket number C-2020-3020883 is hereby denied.
2. That this matter be marked closed.

Date: December 10, 2020

\_\_\_\_\_/s/  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge