

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher Hindson

v.

Aqua Pennsylvania, Inc.

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C-2020-3019291

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

The Complainant filed a formal complaint against his wastewater service utility alleging that a recent rate increase was excessive and unreasonable. This initial decision dismisses the complaint, finding that the Complainant failed to carry his burden of proving that the Respondent violated the Public Utility Code, a Commission regulation or order, or the utility's tariff, or that application of the Commission-approved tariff is unreasonable.

**HISTORY OF THE PROCEEDING**

On March 6, 2020, the Complainant, Christopher Hindson, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania, Inc. (Aqua) at Docket No. C-2020-3019291. In his complaint, Mr. Hindson challenged as unreasonable a recent rate increase that resulted in his bills increasing from \$200 per quarter to \$100 per month. Mr. Hindson requests that the Commission protect him from being overcharged.

On March 26, 2020, Aqua filed an answer and new matter in response to Mr. Hindson's complaint. In its answer, Aqua denied that there are any incorrect charges on the Complainant's bills. Aqua avers that the rates it is charging were approved by the Commission in its Order entered on May 9, 2019, at Docket No. R-2018-3003561.

In its new matter, Aqua avers that the rate it is charging Mr. Hindson is consistent with its Commission-approved tariff and that Commission-approved tariffs have the force and effect of law and are binding on utilities and their customers. Aqua requests that the complaint be dismissed with prejudice or denied.

By notice dated June 25, 2020, the Commission scheduled a telephonic hearing in this proceeding for August 11, 2020 and assigned me as the Presiding Officer.

The hearing was held as scheduled on August 11, 2020. Mr. Hindson appeared and testified on his own behalf. He offered one exhibit that was admitted into the record. Aqua appeared and was represented by Margaret A. Morris, Esquire. Ms. Morris presented the testimony of one witness and offered six exhibits, all of which were admitted into the record. The record consists of a 33-page transcript, one Complainant exhibit and six Respondent exhibits. The record closed on October 2, 2020, upon my receipt of the hearing transcript.

#### FINDINGS OF FACT

1. The Complainant in this proceeding is Christopher Hindson.
2. The Respondent in this proceeding is Aqua Pennsylvania, Inc.
3. The service address is 152 Kimberly Drive, Blakeslee, PA. (Tr. 8).
4. Prior to the increase that is being challenged by the Complainant in this proceeding, Mr. Hindson was paying \$200 per quarter for wastewater service. (Tr. 9).

5. Beginning in 2020, Mr. Hindson's rate for wastewater service increased from \$200 per quarter (\$800 per year) to \$100 per month (\$1,200 per year). (Tr. 9).
6. Mr. Hindson resides in the Tobyhanna division of Aqua's service territory. (Tr. 19).
7. On August 17, 2018, Aqua filed proposed Tariff Sewer – Pa. P.U.C. No. 2, seeking an increase in its total annual operating revenues. (Tr. 20; Aqua Ex. 2).
8. Notice of the proposed rate increase was provided to all customers prior to Aqua's filing. (Tr. 19-20; Aqua Ex. 1).
9. By Final order entered May 9, 2019, the Commission approved a Joint Petition for Settlement by which it permitted Aqua to increase its wastewater rates to produce additional annual operating revenue of not more than \$4.7 million. (Tr. 21; Aqua Ex. 2).
10. Following the issuance of the Commission's Final Order approving the Joint Petition for Settlement, Aqua submitted amended tariffs to reflect the rate increase permitted by the Commission. (Tr. 21).
11. By Secretarial Letter dated July 10, 2019, the Commission confirmed approval of the amended tariffs submitted by Aqua reflecting the Commission-approved rates. (Tr. 22; Aqua Ex. 3).
12. Aqua's amended tariff reflects the Commission-approved rate increase for wastewater service to its Tobyhanna division customers to \$100 per month. (Tr. 23; Aqua Ex. 4).
13. The first bill issued to Mr. Hindson reflecting the increased rate was his bill dated January 31, 2020. (Tr. 25; Aqua Ex. 6).

14. Aqua has charged Mr. Hindson the increased rate consistent with its Commission-approved tariff. (Tr. 12, 25; Aqua Ex. 6).

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. Here, Mr. Hindson alleges that a recent rate increase by his wastewater service provider is excessive, and he seeks Commission protection from being overcharged. Therefore, as the proponent of a rule or order in this proceeding, Complainant has the burden of proof pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. 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. 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 (1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his/her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent.

*Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

The material facts in this proceeding are not in dispute. Mr. Hindson testified that, prior to the rate increase at issue here, he was paying \$200 per quarter, or \$800 per year, for his wastewater service. (Tr. 9). Following the increase, his bills went to \$100 per month, or \$1,200 per year. (Tr. 9). He argues that Aqua is the only available wastewater provider and he cannot switch companies. (Tr. 9). Mr. Hindson acknowledged that the increased rates charged by Aqua are consistent with its Commission-approved tariff. (Tr. 12-13). He is merely arguing that the increase is excessive and unreasonable. (Tr. 9, 13).

Aqua presented the testimony of Erin Feeney, Manager of Rates and Planning. (Tr. 15). Mr. Feeney explained that Aqua filed Tariff Sewer-Pa. P.U.C. No. 2 with the Commission on August 17, 2018, at Docket No. R-2018-3003561, seeking to increase its annual operating revenue by approximately \$5.4 million. (Tr. 19-20; Aqua Ex. 2). She testified that notice of the proposed increase was provided to all customers prior to filing its tariff supplement. (Tr. 19; Aqua Ex. 1). Ms. Feeney explained that the proposed increase would raise rates for the company's Tobyhanna division customers from \$66.67 per month to \$100 per month. (Tr. 20). She stated that Mr. Hindson did not file a complaint to the requested increase or otherwise intervene in that proceeding. (Tr. 20).

Ms. Feeney further testified that, by Final Order entered May 9, 2019, the Commission approved a Joint Petition for Settlement submitted by the parties to the proceeding at Docket No. R-2018-3003561, whereby it approved, *inter alia*, an increase in rates to \$100 per month for its Tobyhanna division customers. (Tr. 21; Aqua Ex. 2). She testified that Aqua filed amended tariffs in compliance with the Commission's Final Order and that the Commission, by

Secretarial Letter dated July 10, 2019, confirmed its approval of Aqua's compliance tariffs. (21-22; Aqua Ex. 3). In fact, Aqua's compliance tariffs reflect the Commission-approved rate of \$100 per month for its Tobyhanna division customers. (Tr. 22-23; Aqua Ex. 4).

Ms. Feeney testified that the first bill issued to Mr. Hindson reflecting the increased rate was his January 31, 2020 bill. This bill showed an amount due for service provided during the month of January of \$100. (Tr. 25; Aqua Ex. 6).

A utility's Commission-approved tariff has the force and effect of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 32 Pa. Cmwlt. 319, 379 A.2d 339 (1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 63 Pa. Cmwlt. 238, 437 A.2d 1067 (1981) (*Brockway Glass*); *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlt. 1995). Tariff provisions that have been approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 140 Pa. Cmwlt. 599, 594 A.2d 816 (1991); *alloc. den.*, 529 Pa. 670, 605 A.2d 335 (1992); 66 Pa. C.S. § 316. A Complainant seeking to challenge or evade the effect of an existing, Commission-approved tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render application of the challenged tariff provision unreasonable. *Brockway Glass*.

Mr. Hindson has offered no evidence proving that the Aqua tariff provisions reflecting the Commission-approved rate increase are unreasonable, nor has he proven that circumstances have changed so significantly as to render application of the disputed tariff provisions unreasonable. Mr. Hindson merely believes the increase is excessive. His personal opinion alone that a tariff provision is unreasonable, without further proof or support, is insufficient to sustain his burden of proof. *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Even a *pro se* Complainant must provide relevant and necessary information. *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlt. 1984).

As the party seeking affirmative relief from the Commission, Mr. Hindson bears the burden of proof. 66 Pa.C.S. § 332(a). Mr. Hindson did not prove that Aqua violated the Public Utility Code, a Commission regulation or order, or the company's own Commission-approved tariff, nor did he prove or even suggest that circumstances have changed so

significantly that application of the company's Commission-approved rates have been rendered unreasonable. Accordingly, the complaint is 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. As the proponent of a rule or order in this proceeding, Complainant has the burden of proof. 66 Pa.C.S. § 332(a).

3. To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

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

5. A utility's Commission-approved tariff has the force and effect of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 32 Pa. Cmwlth. 319, 379 A.2d 339 (1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981); *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

6. Tariff provisions that have been approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 140 Pa. Cmwlth. 599, 594 A.2d 816 (1991); *alloc. den.*, 529 Pa. 670, 605 A.2d 335 (1992); 66 Pa. C.S. § 316.

7. A Complainant seeking to challenge or evade the effect of an existing, Commission-approved tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render application of the challenged tariff provision unreasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981).

8. A party's mere personal opinion alone that a tariff provision is unreasonable, without further proof or support, is insufficient to sustain his/her burden of proof. *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

9. Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Christopher Hindson against Aqua Pennsylvania, Inc. at Docket No. C-2020-3019291 is hereby denied.
2. That the proceeding at Docket No. C-2020-3019291 be marked closed.

Date: January 4, 2020

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/s/  
Steven K. Haas  
Administrative Law Judge