

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ibrahima Diallo	:	
	:	F-2021-3025107
v.	:	F-2021-3025270
	:	F-2021-3025268
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision denies in part and grants in part the formal complaint of Ibrahima Diallo at Docket Nos. F-2021-3025107, F-2021-3025270, and F-2021-3025268. Mr. Diallo’s request to have an irregular water usage billing removed is denied due to Complainant’s failure to meet his burden of proving that Pennsylvania-American Water Company billed him incorrectly for water service. Mr. Diallo’s request to receive a Commission payment arrangement is granted.

HISTORY OF THE PROCEEDING

On March 30, 2021, Ibrahima Diallo (Mr. Diallo or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Pennsylvania-American Water Company (PAWC).¹ The Commission’s Secretary’s Bureau created docket number F-2021-3025107 for Mr. Diallo’s complaint against his water service. Intending to open a docket for Mr. Diallo’s complaint against his wastewater service, the

¹ Commission records show PAWC was served the formal complaint on April 8, 2021.

Commission's Secretary's Bureau also created docket number F-2021-3025268. However, this docket was inadvertently opened for Mr. Diallo's complaint against his water service, which had already been opened at F-2021-3025107. Therefore, the Secretary's Bureau created a new docket, F-2021-3025270, for Mr. Diallo's complaint against his wastewater service. Currently, Commission records do not show that docket number F-2021-3025268 or any associated records for that docket number exist.²

In his complaint, Mr. Diallo averred PAWC charged him for overage usage. Mr. Diallo both indicated he would like a payment arrangement and PAWC to remove his large bill due to irregular water usage. On April 28, 2021, and May 6, 2021, PAWC filed an answer to Mr. Diallo's formal complaint at docket numbers F-2021-3025107 and F-2021-3025268, respectively. PAWC denied there were incorrect charges on Mr. Diallo's bill. PAWC admitted that there was higher than normal water usage at Mr. Diallo's property between billing periods starting September 12, 2020 and ending December 10, 2020. However, PAWC averred these amounts were based on actual meter reads and that the potential for unintended water usage always exists. Further, PAWC averred Mr. Diallo notified PAWC that he had a leaking toilet, which was repaired on or around November 24, 2020. PAWC admitted that Mr. Diallo is seeking a payment arrangement, but otherwise denied that Mr. Diallo is entitled to the relief requested in the formal complaint at paragraph No. 5, i.e., removal of the large bill due to irregular water usage.

On April 30, 2021, a hearing notice was issued setting an initial telephonic evidentiary hearing for this matter for June 10, 2021, beginning at 10:00 a.m., and assigning me as the presiding officer. A prehearing order was issued on April 30, 2021, setting forth various rules to govern the June 10, 2021 hearing.

On May 25, 2021, PAWC filed a motion to consolidate the formal complaint for this matter docketed at F-2021-3025107, with F-2021-3025270, and F-2021-3025268. On

² The Complainant's formal complaints are an appeal from an informal determination of the Bureau of Consumer Services (BCS) dated March 8, 2021, at BCS No. 3780201. Review of a BCS determination is de novo. 52 Pa. Code § 56.173(a).

June 2, 2021, I granted PAWC's motion to consolidate docket numbers F-2021-3025107, F-2021-3025268, and F-2021-3025270, because there were common issues of law and fact since the three complaints are duplicates; consequently, I ordered that the answers filed in response to docket numbers F-2021-3025107 and F-2021-3025268 would be applied to F-2021-3025270.

The hearing convened as scheduled on June 10, 2021. The Complainant appeared *pro se* and testified. The Complainant offered two exhibits, both of which were admitted into the record. (Diallo Exhibits 1-2). The respondent, PAWC, also appeared and was represented by Timothy McHugh, Esq. PAWC presented the testimony of Todd Haslup, a Senior Compliance Analyst with PAWC. PAWC offered five exhibits, all of which were admitted into the record. (PAWC Exhibits 1-5).

The record consists of a 44-page transcript and seven exhibits. The record closed on July 12, 2021, upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The complainant in this case is Ibrahima Diallo.
2. The respondent in this case is Pennsylvania-American Water Company.
3. The complaint concerns water service at 111 Landover Court, Enola, Pennsylvania, 17024 (service address). Tr. 11.
4. Complainant is the landlord of the service address. Diallo Exhibit 2.
5. Diallo Exhibit 1 is a letter from Penn State Health confirming the admission of a tenant at the service address to Holy Spirit Hospital for COVID-19 Pneumonia. Diallo Exhibit 1.

6. Diallo Exhibit 2 is a residential lease agreement between Ibrahima Diallo and the tenant at the service address. Diallo Exhibit 2.

7. PAWC Exhibit 1 is an account statement for Ibrahima Diallo for water service at 111 Landover Court, Enola, Pennsylvania, 17024. PAWC Exhibit 1.

8. PAWC Exhibit 2 is customer contact records for Ibrahima Diallo's PAWC account at the service address. PAWC Exhibit 2.

9. PAWC Exhibit 3 is service orders for Ibrahima Diallo's PAWC account at the service address. PAWC Exhibit 3.

10. PAWC Exhibit 4 is PAWC's Tariff Rule 15.1 included in Supplement No. 2 to PAWC's Tariff Water-PA P.U.C. No. 5. PAWC Exhibit 4.

11. PAWC Exhibit 5 is the PUC's Bureau of Consumer Services' (BCS) Opening and Closing Report for BCS case no. 3780201.

12. Residential water service is provided at the service address. PAWC Exhibit 5.

13. Complainant is billed in his name for water service at the service address. Tr. 18.

14. The period of irregular water usage includes three billing periods: September 12, 2020 to October 13, 2020 (first billing period); October 14, 2020 to November 11, 2020 (second billing period); and November 12, 2020 to December 10, 2020 (third billing period). Tr. 26; PAWC Exhibit 1.

15. During the first billing period, the service address used 7,400 gallons of water and was billed \$130.67 for water service. Tr. 26; PAWC Exhibit 1.

16. During the second billing period, the service address used 36,100 gallons of water and was billed \$477.71 for water service. Tr. 26; PAWC Exhibit 1.

17. During the third billing period, the service address used 27,400 gallons of water and was billed \$372.51 for water service. Tr. 26; PAWC Exhibit 1.

18. Two tenants lived at the service address during the period of irregular water usage. Tr. 12-13; Diallo Exhibit 2.

19. Complainant's account for PAWC water service to the service address was established on July 3, 2018. PAWC Exhibit 2.

20. All payments by Complainant to PAWC for water service to the service address were timely paid in full through November 5, 2020. Tr. 38; PAWC Exhibit 1.

21. Complainant has no previous payment arrangements with PAWC for past due bills or high bills for water service at the service address. Tr. 20.

22. The bills issued by PAWC to Complainant are based on actual meter reads. Tr. 24, 26; PAWC Exhibit 1.

23. One of the tenants at the service address was admitted to Holy Spirit Hospital from November 9, 2020 to November 13, 2020 for COVID-19 Pneumonia. Diallo Exhibit 1; Tr. 16-17.

24. Complainant admitted the irregular water usage was due to a leaking toilet. Tr. 15-16, 27, 40.

25. Complainant contacted the tenants to shut off the leaking toilet that was the cause of the irregular water usage. Tr. 15-16.

26. Both Complainant and tenants were concerned that shutting off water to the leaking toilet would cause damage to the toilet. Tr. 16.

27. On November 24, 2020, Complainant called PAWC regarding a high bill, and in response PAWC created a service order to inspect for a leak and high usage. Tr. 29; PAWC Exhibit 2.

28. A field service representative visited the service address on November 25, 2020 and identified an active leak at the service address; specifically, he heard water going into the drain and the toilet filling constantly. Tr. 29; PAWC Exhibit 3.

29. On December 10, 2020, the Complainant called PAWC to confirm a plumber had fixed the leaking toilet. Tr. 27, 29; PAWC Exhibit 2.

30. After the leaking toilet was fixed, there was a decline in the water bill. Tr. 16, 29; PAWC Exhibit 1.

31. The toilet is not a facility owned by the Company. Tr. 15, 27, 33.

32. Complainant requests a payment arrangement if the bill for irregular water usage is not removed. Tr. 17-18.

33. Complainant's residential address is 2701 West Thompson Street, Philadelphia, PA 19121. Tr. 11.

34. Five people live at Complainant's residential address, including himself and his wife, mother-in-law, son, and daughter. Tr. 19.

35. Complainant's gross annual income is approximately \$264,000. Tr. 19.

36. Complainant's wife's gross annual income is approximately \$50,000. Tr. 20.

37. Complainant's gross annual household income is \$314,000. Tr. 19-20.³

DISCUSSION

The Public Utility Code, 66 Pa. C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As a proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the 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 (Pa. P.U.C. 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (Pa. P.U.C. 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 (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 (Pa. 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.

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 623 A.2d 1100 (Pa. Cmwlth. 1982); 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 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Super. 278 (Pa. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon 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

³ Complainant did not present any evidence of his son's, daughter's, or mother-in-law's income.

complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied his 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 (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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Mr. Diallo's complaint requests that PAWC remove his large bill due to irregular water usage. The burden of proof before the PUC for "high bill" complaints is set forth in *Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 98 (Pa. P.U.C. 1980) ("*Waldron*"). In *Waldron*, the Commission adopted the Michigan Public Service Commission's policy enunciated in *Hallifax v. O & A Elec. Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor of resolving billing disputes, it is not the sole criterion. The Commission will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

In *Bennett v. Peoples Nat. Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010) ("*Bennett*"), the Commission restated its position on high bill disputes, explaining *Waldron* provides a range of criterion that should be examined. In *Bennett*, the Commission held that *Waldron* does not limit the establishment of a *prima facie* case to billing history and consistency of a customer's usage pattern. *Bennett* at 6. Instead, to establish a *prima facie* case, "the Commission may consider the billing history of the account, any change in usage patterns (such as change in the number of occupants residing in the household or potential energy utilization), *and* any other relevant facts or circumstances that come to light during the proceeding." *Id.* (emphasis in original).

Although multiple factors may be considered under *Waldron*, the cause of the high billing at dispute in this case is singular and undisputed. The irregular water usage and associated high water service billing from September 12, 2020 to December 10, 2020 is due to a leaking toilet at the service address. Tr. 15-16, 26-27, 40; PAWC Exhibit 1. Complainant and respondent both admit this is the cause of the bill at dispute at the service address, and there is no other allegation or evidence that there is any other cause of the high billing. *Id.* Once the toilet leak was fixed, the high billing for water service ceased. Tr. 16, 29; PAWC Exhibit 1.

PAWC's Tariff Rule 15.1 states that PAWC is not liable for any loss or damage due to leaks on a customer's facilities not owned by the Company, including, but not limited to, internal plumbing or fixtures. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers, and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n.*, 437 A.2d 1067 (Pa. Cmwlth 1981). Accordingly, leaks caused by Complainant's internal plumbing or fixtures, i.e., his toilet, and the associated high billing costs are not the responsibility of PAWC.

During the hearing, Complainant introduced evidence that his tenant had COVID-19 during a portion of the period of irregular water usage. Diallo Exhibit 1; Tr. 16-17. Additionally, Complainant and his tenants were concerned that shutting off water to the leaking toilet would cause damage to the toilet. Tr. 16. Although both circumstances may have complicated fixing the leaking toilet, there is no legal basis to claim that they serve to transfer liability for the costs associated with the leak from Mr. Diallo to PAWC. Therefore, Complainant has not met his burden by proving that PAWC violated the Public Utility Code, a Commission regulation or order, or its own tariff. Consequently, PAWC is not responsible or accountable for the high water bills at issue, and the complaint is denied to the extent it seeks Commission action to correct the bills resulting from such irregular usage.

Next, during the hearing, Complainant confirmed he would like a payment arrangement if the billing for irregular water usage is not removed. Tr. 17-18. Under the Responsible Utility Customer Protection Act (Act), the Commission is authorized to establish

payment arrangements between a public utility and customers to resolve payment disputes. 66 Pa. C.S. § 1405(a). The Commission may be limited in its ability to establish payment arrangements for customers who have previously enrolled in a payment arrangement or a customer assistance program. 66 Pa. C.S. §§ 1405(c)-(d). However, there is no record evidence that demonstrates that Mr. Diallo has not paid his PAWC bills for the service address in full until the period of irregular water usage, or that he has previously been given a Commission ordered payment arrangement. Tr. 20, 38; PAWC Exhibit 1. Therefore, Mr. Diallo is eligible for a payment arrangement.

Pursuant to the Act, the length of a payment arrangement that the Commission may grant is determined by the customer's household income in relation to where the customer falls on the federal poverty level (FPL). Federal guidelines provide that an annual income of \$31,040 for a household of five is 100% of the FPL. *Fed. Reg.*, Vol. 86, No. 19 at 7733 (February 1, 2021). Complainant's household includes five people, and Complainant's and his wife's annual income is approximately \$314,000,⁴ which equates to approximately 1000% of the FPL.⁵ Tr. 19-20.

Under the Act, the Commission may grant utility customers with a gross monthly household income exceeding 300% of the FPL a payment arrangement lasting up to six months to resolve an unpaid balance. 66 Pa. C.S. § 1405(b)(4). However, in response to the COVID-19 pandemic, the Commission extended repayment terms under the authority provided by the Governor's Proclamation and currently requires that a utility offer a payment arrangement with a minimum length of one year to residential customers with incomes over 300% of the FPL. *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (Order entered March 18, 2021) ("*March 18 Order*").⁶ Therefore, Mr. Diallo's complaint is granted in part, and

⁴ \$264,000 + \$50,000 = \$314,000

⁵ $(\$314,000/\$31,040) \times 100 = 1,012\%$ of the FPL.

⁶ The Commission's *March 18 Order* also states that the customer may agree to or request a shorter payment arrangement and the utility may agree to a longer payment arrangement. Parties may therefore confer should a different payment arrangement length be mutually acceptable. *Id.* Additionally, the March 18 Order set forth December 31, 2021 as the end date for establishing such extended payment arrangements. *Id.* However, the Commission has since modified its March 18 Order, and September 30, 2021 is now the end date for establishing such extended payment arrangements. *Public Utility Service Termination Moratorium; COVID-19 Cost Tracking and Creation of Regulatory Asset*, Docket Nos. M-2020-3019244, M-2020-3019775 (Order entered July 15, 2021).

PAWC shall be required to offer Complainant a one-year payment arrangement to resolve any unpaid balance.⁷

In conclusion, the Complainant has failed to satisfy his burden that there are incorrect charges on the bill but has satisfied his burden that he is eligible for a payment arrangement for the outstanding balance. The complaint will therefore be granted in part and denied in part.

CONCLUSIONS OF LAW

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

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

3. To establish a sufficient case and satisfy the burden of proof, the 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 (Pa. P.U.C. 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (Pa. P.U.C. 1976).

4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

5. A preponderance of the evidence is established 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 (Pa. 1950).

⁷ Although Mr. Diallo did not present evidence of his son's, daughter's, or mother-in-law's income, any additional income would not have changed Mr. Diallo's eligibility for a payment arrangement since his household income is already above 300% FPL.

6. 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.

7. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlt. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlt. 1982); 2 Pa. C.S. §704.

8. To establish substantial evidence, 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 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Super. 278 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

9. Upon 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 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. Cmwlt. 1982), *aff'd*, 501 Pa. 433 (Pa. 1983).

10. 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. Cmwlt. 2001).

11. When considering a "high bill" complaint, while the accuracy of the meter is an important factor, the Commission will also consider the billing history of the complainant, any change in the number of occupants residing at the household, the potential for energy utilization, and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 98, 100 (Pa. P.U.C. 1980).

12. To establish a *prima facie* case under *Waldron*, the Commission may consider the billing history of the account, any change in usage patterns (such as change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding. *Bennett v. Peoples Nat. Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010).

13. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers, and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n.*, 437 A.2d 1067 (Pa. Cmwlth 1981).

14. Complainant failed to sustain the burden of demonstrating that there are incorrect charges on the bills for water service at the service address.

15. Complainant's residential household income is approximately 1000% of the federal poverty level. *Fed. Reg.*, Vol. 86, No. 19 at 7733 (February 1, 2021).

16. The Commission is authorized to establish payment arrangements between a public utility and customers to resolve payment disputes. 66 Pa. C.S. § 1405(a).

17. A utility must offer a payment arrangement with a minimum length of one year to residential customers with incomes over 300% of the FPL. *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (Order entered March 18, 2021); *Public Utility Service Termination Moratorium; COVID-19 Cost Tracking and Creation of Regulatory Asset*, Docket Nos. M-2020-3019244, M-2020-3019775 (Order entered July 15, 2021).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Ibrahima Diallo against seeking to remove irregular water usage billing is denied;

2. That the complaint of Ibrahima Diallo against Pennsylvania-American Water Company seeking a payment arrangement is hereby granted;

3. That Pennsylvania-American Water Company shall offer Complainant a one-year payment arrangement to resolve any unpaid balance upon entry of a Final Order in this matter;

4. That Pennsylvania-American Water Company shall not terminate the service to Ibrahima Diallo, absent emergency circumstances, so long as Mr. Diallo complies with the payment arrangement;

5. That, to the extent that Ibrahima Diallo fails to comply with the payment arrangement, Pennsylvania-American Water Company may terminate water service at the service address;

6. That the Secretary's Bureau shall mark Dockets Nos. F-2021-3025107, F-2021-3025270, and F-2021-3025268 as closed.

Date: August 4, 2021

_____/s/
John M. Coogan
Administrative Law Judge