

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Green	:	
	:	
v.	:	C-2021-3025217
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the formal Complaint because the Complainant failed to meet his burden of proving that the Respondent’s wastewater charges were unreasonable or otherwise violated the Public Utility Code, a Commission order, regulation, or the Company’s Commission-approved tariff.

HISTORY OF THE PROCEEDING

On April 13, 2021, David Green (Complainant or Mr. Green) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (PAWC or Respondent). In the Complaint, Mr. Green alleged that he should not be charged for wastewater usage based on water used to fill his pool instead of entering the wastewater system. The Complainant seeks a credit for the water used to fill his pool.

On May 5, 2021, PAWC filed an Answer to the Complaint. In its Answer, the Respondent either admitted or denied the various averments of the Complaint. Specifically, the Respondent denied that the Complainant was billed incorrectly and asserted that the wastewater billing complied with the Respondents Commission-approved wastewater tariff.

By Initial Call-In Telephonic Hearing Notice dated June 16, 2021, a telephonic hearing was scheduled for July 22, 2021, at 10:00 a.m., and the matter was assigned to me. A prehearing order dated July 2, 2021, was issued setting forth various procedural rules that would govern that hearing.

On July 22, 2021, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered two exhibits, both of which were entered into the record.

PAWC was represented by Timothy McHugh, Esquire. PAWC presented the testimony of Todd Haslup, Senior Compliance Analyst at PAWC. PAWC offered three exhibits, all of which were entered into the record.

The record closed on August 3, 2021, upon submission of the transcript to the Commission.

FINDINGS OF FACT

1. The Complainant is David Green. Tr. 4.
2. The Respondent is Pennsylvania-American Water Company.
3. The Service Address is 489 East Neversink Road, Reading, PA 19606.

Tr. 5-6.

4. The Complainant receives wastewater service from PAWC at the Service Address. Tr. 14; PAWC Exh. 1.

5. The Respondent operates under a wastewater tariff which was approved by the Commission by order entered on December 7, 2017, at Docket No. R-2017-2595853. Tr. 17.

6. Residential wastewater flows are not metered. Tr. 19.

7. Residential wastewater usage charges are based on a customer's metered water usage. Tr. 16-18; PAWC Exh. 2-3.

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 (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

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 Murphy v. Pa. Dept. of Pub. Welfare, White Haven Cntr., 480 A.2d 382 (Pa.Cmwlt. 1984).

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).

The Complainant's position is that he should not be charged wastewater usage charges for the water he uses to fill his pool because it is not entering the wastewater system. The Complaint does not dispute the meter readings for the billing period relevant to when he filled his pool. nor any of the other charges associated with his water or wastewater billing. The Complainant's sole issue is the reasonableness of being billed a wastewater usage charge for water which he 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 Tel. Co., 372 A.2d 1203 (Pa. Super. 1977) *aff'd* 420 A.2d 371 (Pa. 1977); Behrend v. Bell Tel. Co., 243 A.2d 346 (Pa. 968). 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 does not require perfect service or the best possible service, only reasonable and adequate service. Analytical Lab. Servs., Inc. v. Metro. 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: Metro. 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 Tel. Co. of Pa., 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).

In this case, 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 witness credibly testified that residential wastewater flows are not metered. Therefore, there is no way for the Respondent to accurately measure the wastewater the Complainant's household discharges into the wastewater system. As a result, residential wastewater usage charges are required to be based on a customer's metered water usage. The Complainant was charged in compliance with this requirement.

The Complainant's sole argument that water used to fill his pool should not be included in the water meter reading for wastewater billing purposes because it does not enter the wastewater system is without merit. The Respondent has shown that the Commission-approved wastewater usage charge in its tariff is based upon PAWC'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. This means that the Respondent's wastewater usage charge has been set at a rate which the Commission has determined is fair and reasonable *to all customers* 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 Complainant's belief, without evidence, that such charges should not be applicable to water he uses to fill his swimming pool each year, is not sufficient to demonstrate that the Respondent's wastewater charges are unreasonable or otherwise violate the Public Utility Code, a Commission order, regulation, or the Company's Commission-approved tariff.

Accordingly, I find the Complainant has failed to meet his 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; Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa. Cmwlt. 1997); Stiteler v. Bell Tel. Co. of Pa., 379 A.2d 339 (Pa.Cmwlt. 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.Cmwlt. 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.Cmwlt. 1998); Schellhammer v. Pa. Pub. Util. Comm'n, 629 A. 2d 189 (Pa.Cmwlt. 1993).
7. The Complainant has failed to satisfy his burden and demonstrate that the Respondent's Commission-approved wastewater tariff rates are unreasonable. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067, 63 (Pa.Cmwlt. 1981).

8. The Complainant has failed to satisfy his burden to demonstrate that the 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 filed by David Green against Pennsylvania-American Water Company, at Docket No. C-2021-3025217, is dismissed; and
2. That Docket No. C-2021-3025217 be marked closed.

Date: September 22, 2021

_____/s/
F. Joseph Brady
Administrative Law Judge