

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wuxin Yang	:	
	:	
v.	:	C-2022-3030596
	:	
Peoples Natural Gas Company LLC	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses a Complaint alleging the delivery and commodity charges on Complainant’s residential gas bill were incorrect. Complainant failed to establish his burden of proof that the delivery and commodity rates charged by Respondent violated the Public Utility Code, a regulation or order of the Commission or the utility’s Commission approved tariff.

HISTORY OF THE PROCEEDINGS

On January 3, 2022, Complainant Wuxin Yang (Complainant or Mr. Yang) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Peoples Natural Gas Company LLC (Respondent or Peoples) at Docket No. C-2022-3030596. Mr. Yang alleges that he compared his historical bills, and he noted that Peoples’ delivery charge percentage continued to increase from the beginning of 2021. Mr. Yang suggests that it is the same pipeline that his gas is delivered through each month. So, he questions why the delivery charge continues to increase. Complaint ¶ 4. Mr. Yang also alleges that “the commodity mcf rate jumps up too much” in comparison to last year’s rate. *Id.* Mr. Yang claims, “Even within

the year, it [commodity rate] jumped 150%. Also, delivery percent fee increased without reason.” *Id.*

For relief, Complainant asks the Commission to monitor the utility’s pricing and not allow the utility to raise their delivery and commodity rates “any time they want to, without providing true rate they purchase from their supplier.” Complaint ¶ 5.

On February 17, 2022, Peoples filed an Answer and alleged in part as follows:

Peoples denies any allegation by Complainant that Peoples’ delivery charge is unfair or unreasonable. The delivery charge is designed to recover Peoples’ “non-gas” costs. “Non-gas” costs are those costs incurred by Peoples to own, operate, and maintain its natural gas distribution system that includes pipelines, meters, and extensive gathering, storage, and compression facilities. The delivery charge was last reviewed and approved by this Commission after extensive review and testimony in Peoples’ last base rate case at Docket No. R-2018-3006818 by an Opinion and Order dated October 3, 2019. New rates filed in the last base rate case proceeding became effective in October 2019. Complainant can access that Order along with the remaining case file documents on the Pennsylvania Public Utility Commission website.

The Commodity charge represents actual cost of buying natural gas supplies for customers. It is a straight dollar-for-dollar pass through of gas costs. Peoples does not make a profit on the cost of gas itself. Peoples is required by law to buy the most reliable gas supply at the lowest available cost. Traditionally, the price of natural gas on the national level fluctuates, just like the price of other commodities on the open market. During the year 2021, market prices for natural gas went up dramatically due to several factors, including diminished natural gas supplies and lower storage inventory levels.

Answer ¶ 4.

Peoples argued that Complainant’s concerns about delivery and commodity charges are more appropriately addressed and reviewed in a rate proceeding. As relief, Peoples requested that the Complaint be dismissed. Answer ¶ 5.

On February 23, 2022, the Commission notified the Parties that this case was scheduled before me for a telephone hearing on April 12, 2022, at 10:00 a.m., and on the same date a Prehearing Order was served upon the Parties informing them about the procedural rules for the hearing. By a corrected notice dated March 10, 2022, the Parties were informed that the telephone hearing was scheduled for April 20, 2022, at 10:00 a.m.

The hearing convened on April 20, 2022. Mr. Wang appeared, self-represented, and testified on his own behalf. Peoples was represented by Jennifer L. Petrisek, Esquire, who called Peoples' rates manager, Carol Scanlon, to testify. Mr. Wang offered two exhibits, which were admitted into the record. Peoples marked two exhibits for identification purposes but did not move the exhibits into evidence. The hearing generated a 97-page transcript (Tr.) which was docketed with the Commission's Secretary's Bureau on May 26, 2022.

At the close of the hearing, I informed the Parties they would have an opportunity to submit a memorandum outlining their position on the issues. The memorandum was to be submitted by June 17, 2022. Tr. 93. Neither Party submitted a memorandum by the deadline. By First Interim Order entered on June 22, 2022, each Party was directed to file by July 22, 2022, a memorandum in support of their respective position on the issues in this proceeding, by referencing support for their position in the transcript, citing the evidence of record relied upon, referencing applicable law, and stating the relief or remedy requested from the Commission. Again, neither Party filed a memorandum. Accordingly, on August 9, 2022, I issued a Second Interim Order closing the record. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Wuxin Yang resides at 1014 Mirror Street, Pittsburgh, Pennsylvania 15217. Tr. 7.

2. Respondent Peoples Natural Gas Company LLC is a jurisdictional public utility providing gas services to Pennsylvania customers.

3. Complainant is a customer of Respondent, and for certain months in 2021 and 2022, his billings for gas service varied in mcf rates and customer charges as follows:

Type of Charge	Feb 2021	Mar 2021	Nov 2021	Dec 2021	Feb 2022	Mar 2022
Customer	\$14.52	\$14.52	\$14.50	\$14.50	\$14.50	\$14.50
Commodity per mcf	\$1.8111	\$1.8810	\$4.8060	\$4.8075	\$4.4408	\$4.4407
Delivery per mcf	\$4.1726	\$4.1730	\$4.5310	\$4.5306	\$4.4981	\$4.4983
Capacity per mcf	\$1.7604	\$1.7603	\$1.7238	\$1.7231	\$1.7296	\$1.7294

Table 1

Tr. 13-15, 35-36; Complainant Exhibit 1.

4. Respondent's customer charge is a flat fee billed to residential customers each month irrespective of the amount of gas used by a customer. Tr. 57.

5. In supplying gas to its customers, Respondent provides a commodity service. This commodity service includes the cost for the commodity (gas) plus the capacity cost, which is the cost to get gas from where Respondent purchases the gas to Respondent's pipeline system. Tr. 42, 53-55.

6. Respondent's commodity rate is derived from the cost Respondent pays to purchase gas from suppliers in order to deliver gas to its customers. Tr. 43-47.

7. Respondent's commodity rates are presented annually for approval by the Commission through a proceeding known as a 1307(f) filing.¹ The commodity rates are a part of the company's tariff. Tr. 41-42.

¹ By statute, a 1307(f) proceeding provides the mechanism or procedure for a natural gas distribution company to file a tariff reflecting actual and projected increases or decreases in the company's natural gas costs. The tariff shall have an effective date six months from the date of filing. *See* 66 Pa.C.S § 1307(f)(1). A 1307(f) filing triggers a Commission investigation and hearing(s), with notice to customers, to review the company's proposed tariff. "Prior to the effective date of the filing, the commission shall issue an order establishing the rate to be charged to reflect such changes in natural gas costs." *See* 66 Pa.C.S § 1307(f)(2).

8. A tariff governs the relationship between the utility and the customer.

Tr. 41.

9. In a 1307(f) proceeding, a gas utility proposes gas rate changes which are reviewed by the Commission, and other statutory parties² are involved in the 1307(f) proceeding.

Tr. 42.

10. Respondent's commodity rate for 2021-2022 became effective October 1, 2021, upon Commission approval of the 1307(f) filing at Docket No. R-2021-3023965. Tr. 40-41; Answer ¶ 4.

11. On a quarterly basis, Respondent adjusts the projection of its gas purchase costs based on any market changes and then preforms a true-up (correction) for the most recent three months for the company projected gas costs versus actual costs, resulting in an over-under collection correction. Tr. 43.

12. In addition to the Commission's review and approval of Respondent's 66 Pa.C.S. § 1307(f) filing, there is an audit performed by the Commission on Respondent's commodity rates every three years. Tr. 43.

13. The cost of the gas commodity that Respondent purchases is passed on to the customer as the commodity charge per mcf used by the customer. Tr. 41-43.

14. Respondent does not make a profit on the gas commodity. Tr. 42-43, 64.

15. Respondent's capacity charge is also a pass-through to the customer; Respondent does not make a profit on the capacity charge. Tr. 53.

² The Office of Consumer Advocate and the Office of Small Business Advocate. See 66 Pa.C.S § 1307(f)(3).

16. Market conditions dictate the cost of the gas commodity that Respondent purchases gas from suppliers. Tr. 46.

17. The February 2021 commodity mcf rate compared to the February 2022 commodity mcf rate that Respondent billed Complainant more than doubled from \$1.8111 per mcf to \$4.4408 per mcf. Tr. 13-15, 18, 35-35; Complainant Exhibit 1. *See* Table 1 above.

18. Increases in the cost of gas in the marketplace causes the commodity mcf rate charged by Respondent to increase. Tr. 46.

19. Respondent's delivery charge is established through a base rate filing³ with the Commission similar to a 66 Pa.C.S § 1307(f) filing. Tr. 55.

20. Respondent's delivery charge is a part of the company's tariff. Tr. 41.

21. Respondent's delivery charge includes its costs to move gas through its pipelines to its customers, other fixed costs such as billing, meter reading, a universal service charge and a tax repairs credit or surcredit. Tr. 56-58.

22. Respondent's universal service charge is designed to help recover the cost of gas for low-income customers. Tr. 67-69.

23. Respondent's current delivery charge was approved by the Commission in its 2018 base rate filing at Docket No. R-2018-3006818 and became effective October 29, 2019. Tr. 41, 56, 60, 68, 70; Answer ¶ 4.

³ Whenever a public utility proposes a new base rate, upon reasonable notice to the public, the Commission through the hearing process determines the lawfulness of the proposed rate. *See* 66 Pa.C.S § 1308.

DISCUSSION

Legal Standards

Complaints and Burden of Proof

Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. Section 332(a) of the Code, 66 Pa.C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof.

As the party seeking relief from the Commission, Mr. Yang has the duty to establish his facts by a preponderance of the evidence and must show that the utility is responsible or accountable for the problem described in his Complaint. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 383 A.2d 791 (Pa. 1977).

Additionally, care must be exercised to ensure that the decision of the Commission is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *See, e.g.,* Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Reasonable Rate of Return

Public utility regulation allows for a utility to recover prudently incurred expenses as well as the opportunity to earn a reasonable return on the value of assets used and useful in

public service. The courts recognize a public utility is entitled to an opportunity to earn a fair rate of return on its property dedicated to public service, *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 424 A.2d 1213 (Pa. 1980).

Tariffs

Pennsylvania courts have repeatedly held that tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979) (*Zucker*), *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996), *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (*Kossman*). Therefore, a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Kossman; Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

Analysis

In the present case, Mr. Yang claims there are incorrect charges on his bill because commodity and delivery rates keep increasing without reason or justification by Peoples. Mr. Yang asks the Commission to not allow Peoples to raise their mcf rates “anytime they want to without, providing true rate the[y] purchase from their supplier.” Complaint ¶ 5. Mr. Yang submits, “There must be some institutions to monitor their pricing.” *Id.*

During the hearing, Mr. Yang argued that his commodity rate had increased by 160% and his delivery rate had increased by 10%. Tr. 13-14. The evidence of an increase in Mr. Yang’s delivery rate were his bills from February 2021 to March 2022. For this period, Mr. Yang’s lowest delivery mcf rate was for February 2021 at \$4.1726 and his highest was in November 2021 at \$4.5310. The percentage difference between those two months is 8.6% ($\$4.5310 - \$4.1726 = 0.3584$; $\$0.3584 \div \$4.1726 = 8.6\%$ rounded). See Table 1 above.

Peoples' rate manager was not surprised that Mr. Yang's commodity rate had increased significantly (Tr. 46), and as discussed below, she explained the reasons for the commodity increase. For the monthly billings submitted by Mr. Yang, his capacity mcf rates actually decreased after February 2021. *See* Table 1 above.

Continuing with his argument, Mr. Yang contended that his house does not move farther from Peoples' pipeline system, and Peoples already owned the pipes. Tr. 14, 19. So, he questioned why his delivery charge continued to increase. Tr. 20-21. He also argued he had no choice for his gas supplier since Peoples was a monopoly and owned the pipes. Tr. 23. However, he was not sure what would be a reasonable delivery rate for Peoples to charge, but he asked that the delivery rate and commodity rate be reduced. Tr. 21.

In response to Mr. Yang's position, Peoples submitted the testimony of its rates manager, Carol Scanlon. Ms. Scanlon explained that Peoples' commodity and delivery rates for providing gas service to customers are approved by the Commission through 66 Pa.C.S. § 1307(f) purchase gas costs and 66 Pa.C.S. § 1308 base rate proceedings, respectively. Tr. 41-42, 56, 60, 68, 70. During those proceedings statutory or government parties are involved, notice is given to customers of the proposed rate change and the public has an opportunity to be heard. Ms. Scanlon testified that Peoples' current rates are a part of the company's tariff, and the rates have been approved by the Commission. *Id.*

Concerning Peoples' current commodity rate per mcf, Ms. Scanlon essentially agreed with Mr. Yang that the commodity rate had increased substantially. Tr. 46. However, Ms. Scanlon explained that the commodity rate charged to customers is a pass through. In other words, whatever costs Peoples incurs in purchasing the gas from suppliers that cost is passed on to the customer. Tr. 42, 46. The commodity rate is governed or determined by changes in the marketplace. Tr. 46. Peoples does not make any profit on the commodity, that is, the gas product. Tr. 43. However, by statute (66 Pa.C.S. § 1318) Peoples is required to purchase gas for its customers in accordance with "a least at cost procurement." Tr. 46. Ms. Scanlon further explained that on a quarterly basis, Peoples adjusts the projection of its gas purchase costs based on any market changes and then performs a true-up (correction) for the most recent three months

for the company projected gas costs versus actual costs, resulting in an over-under collection correction. Tr. 43.

Turning to Peoples' delivery charge, Ms. Scanlon acknowledged that the company makes a profit on the delivery charges. Tr. 42. She clarified that Peoples' delivery charge includes its costs to move gas through its pipelines to its customers, other fixed costs such as billing and meter reading, a universal service charge and a tax repairs credit or surcredit. Tr. 56-58. Peoples' universal service charge is designed to help recover the cost of gas for low-income customers. Tr. 67-69. While Peoples earns a profit or a return on the delivery charge or base rate (Tr. 42), the company does not earn a profit on the universal service charge which is a component of the delivery charge. Tr. 68, 73. Ms. Scanlon further noted that Peoples' current delivery charge was approved by the Commission. Tr. 41, 56, 60, 68, 70.

In rebuttal, Mr. Yang requested another hearing to present evidence, i.e., calculations, to prove that Peoples was making a profit on its commodity charge. Tr. 76. Mr. Yang's request for another hearing was denied. Tr. 77. However, he was afforded an opportunity to file a memorandum outlining his calculations and position on the issues, and Peoples would have an opportunity for rebuttal. Tr. 89. As mentioned above, Mr. Yang did not file a memorandum within the time prescribed. Tr. 92-93. *See* First Interim Order entered on June 22, 2022.

Ruling

By law a public utility is entitled to an opportunity to earn a fair rate of return on its property dedicated to public service, *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 424 A.2d 1213 (Pa. 1980). Additionally, a utility's tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *See Zucker*. The evidence establishes that Peoples does not make a profit on its gas commodity or capacity charges, both of which are costs the company incurs to provide the gas product to customers. These costs are passed on to the customers. For the billings he provided, Mr. Yang's capacity charge actually decreased. Mr. Yang requested that the Commission reduce the Peoples'

delivery rate. However, Mr. Yang did not present any evidence to establish that the profit Peoples makes on its Commission-approved delivery rate is unreasonable. Consequently, a ruling is required that Mr. Yang failed to establish that Peoples is responsible for the problem described in his Complaint or that Peoples violated a Commission statute, regulation or order, or the company's tariff. Accordingly, the Complaint will be dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties the subject matter in this proceeding. 66 Pa.C.S. § 701.
2. The party filing the complaint bears the burden of proving that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).
3. Complainant must show that the respondent/utility company is responsible or accountable for the problem described in the complaint. Such a showing must be by a preponderance of the evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 383 A.2d 791 (Pa. 1977).
4. A public utility is entitled to an opportunity to earn a fair rate of return on its property dedicated to public service, *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 424 A.2d 1213 (Pa. 1980).
5. A public utility's tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979),
6. Complainant has not met his burden of proving by a preponderance of the evidence that the named public utility is responsible or accountable for the problem described in his Complaint. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Wuxin Yang against Peoples Natural Gas Company LLC, at Docket No. C-2022-3030596 is dismissed for Complainant's failure to carry his burden of proof.
2. That the Secretary's Bureau shall mark Docket No. C-2022-3030596 closed.

Date: October 11, 2022

/s/
Conrad A. Johnson
Administrative Law Judge