

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tirlochan S. Walia	:	
	:	
v.	:	F-2022-3032572
	:	
The Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses a Formal Complaint alleging Respondent’s tariff, the practice of billing customers in increments of 1,000 gallons for water consumption, was unreasonable and therefore, in violation of the Public Utility Code. Complainant failed to carry his burden of proving that Respondent’s Commission-approved billing tariff was no longer reasonable or that the application of the existing billing tariff was applied unreasonably.

HISTORY OF THE PROCEEDINGS

Complaint

On May 9, 2022, Tirlochan S. Walia (Complainant or Mr. Walia) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against The Pittsburgh Water and Sewer Authority (Respondent or PWSA).¹ In pertinent part, Complainant

¹ The Complaint seeks timely review of the Commission’s Bureau of Consumer Services’ (BCS) decision entered on April 1, 2022, at BCS No. 3823111, which found that Complainant’s billings were based upon actual meter readings and in accordance with the definitions for a billing month.

alleges there is an inequity in two of Respondent's billing practices: (1) billing in blocks of 1,000 gallons and (2) billing periods varying from 26-35 days. Complaint ¶ 4. For relief, Complainant asks the Commission to order PWSA to do the following:

Bill by gallons and maintain a constant calendar date billing period.

If for some reasons, not apparent, it is not feasible; then at least standard concept of rounding off should be used, whereby up to 1,499 gallons will be billed as one thousand gallons, anything between 1,500-2,499 gallons will be billed as two thousand gallons, and so on.

Complaint ¶ 5.

Answer and Preliminary Objections

Respondent filed an Answer² and Preliminary Objections (PO) on June 10, 2022.

Respondent avers in pertinent part as follows:

PWSA's Billing Practices

- (b) It is admitted that PWSA's bills are based on 1,000-gallon increments of water consumption. By way of further response, this billing practice is consistent with PWSA's Commission-approved tariff. PWSA is required by the Public Utility Code to follow its tariff, which the appellate courts have described as having the force of law and being binding on both the utility and its customer.

- (b) It is admitted that PWSA's billing period is not a constant number of days each month and that it can vary from 26 to 35 days. By way of further response, this practice is consistent with the Commission's regulations. Section 56.2 of the regulations defines a billing month as being a period "of not less than 26 days and not more than 35 days," except under specified circumstances that permit public utilities to bill for less than 26 or more than 35 days. Nothing in that provision requires a public

² Respondent's Answer is captioned "THE PITTSBURGH WATER AND SEWER AUTHORITY'S ANSWER AND NEW MATTER TO FORMAL COMPLAINT." However, the filing does not contain a separate section titled New Matter, nor is there a Notice to Plead to New Matter. Thus, for clarity the filing is referred to as an Answer.

utility to maintain a billing period with a constant number of days each billing month.

Answer ¶¶ 4a and 4b. (Footnotes omitted).

Thus, Respondent argues Complainant fails to allege a violation by PWSA of its tariff or a violation by PWSA of the Public Utility Code (Code), a Commission regulation, or a Commission order. For relief, Respondent requests that the Complaint be dismissed.

In PO, Respondent argued, in part, that the Complaint was legally insufficient for the following reasons:

10. The material factual averments in the Complaint are that PWSA bills for water consumption in 1,000-gallon increments and that the Authority's billing period varies from 26 to 35 days. In the Complainant's opinion, which the Commission is not required to accept as true for purposes of preliminary objections, [footnote omitted] PWSA should either bill for consumption based upon each gallon used or implement a rounding method for billing. It is further the Complainant's opinion that PWSA should maintain a constant billing period each month.

11. Assuming for purposes of these Preliminary Objections that the material factual averments in the Complaint are true, they do not demonstrate a violation of the Public Utility Code, Commission regulations, or a Commission order.

12. PWSA's Commission-approved water tariff provides for the Authority to bill in 1,000-gallon increments. . . Section 1303 of the Public Utility Code requires public utilities to adhere to their tariffs. Further, the appellate courts in Pennsylvania have long and consistently held that tariffs have the force of law and are binding on both the utility and its customer. Therefore, it is not within PWSA's power to change its billing period that is set forth in a Commission-approved tariff.

13. The Commission's regulations define a billing month as being 26 to 35 days. Although the regulations permit variations from the 26- and 35-day billing periods, for specific reasons set forth therein, they do not require public utilities to maintain a constant number of days each billing month. Thus, a variation in the billing period of 26 to 35 days, for whatever reason, is consistent with the Commission's regulations.

14. As the Complainant has made no allegations that could lead to a finding that PWSA violated the Public Utility Code, Commission regulations or a Commission order, there is no reason for going to a hearing. Dismissal of the complaint would conserve valuable resources and promote judicial economy.

PO ¶¶ 10-14. (Footnotes omitted).

Respondent's PO contained a Notice to Plead. However, Complainant did not file a response to the Preliminary Objections.³

By Notice dated July 14, 2022, the Parties were informed that this case was assigned to me as the presiding officer.

Interim Order on Preliminary Objections

On August 3, 2022, I issued a *First Interim Order Granting In Part And Denying In Part Respondent's Preliminary Objections And Denying Respondent's Request To Dismiss Complaint (First Interim Order)*. The *First Interim Order* granted Respondent's preliminary objections to the extent that the Commission's regulations authorize billing periods varying between 26 and 35 days. Under the Code, a billing month is defined as a period of not less than 26 days and not more than 35 days, except in certain circumstances, which do not apply to the Complaint. See 52 Pa. Code § 56.2. Succinctly stated, Respondent's billing periods do not constitute a violation of the Code, the Commission's regulations, or a Commission order.

The *First Interim Order* denied Respondent's preliminary objections to the extent that the Complainant challenges the reasonableness of PWSA's tariff pertaining to billing in increments or blocks of 1,000 gallons of water consumption. As the *First Interim Order* explained, a utility's Commission-approved tariff is *prima facie* reasonable. However, a complainant may later challenge the tariff by establishing that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.

³ An answer to a preliminary objection may be filed within 10 days of date of service. 52 Pa. Code § 5.101(f)(1).

Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa. Cmwlth. 1981) (*Brockway*); see *First Interim Order* at 6.

The Hearing

By Notice dated August 3, 2022, the Commission scheduled this matter for an initial call-in telephonic hearing on September 14, 2022 at 10:00 a.m. On August 4, 2022, I issued a Prehearing Order informing the parties about the procedures for the hearing.

The telephone hearing convened as scheduled. Complainant appeared, self-represented, and testified on his own behalf. Complainant did not offer any exhibits. PWSA was represented by Sarah C. Stoner, Esquire, who called one witness, PWSA's Director of Consumer Services, Julie Mechling. PWSA's witness sponsored pre-marked Exhibits 1 through 8, which were admitted into the record.

The evidentiary hearing generated a 64-page transcript, which was filed with the Commission's Secretary's Bureau on October 7, 2022. The record was closed by an interim order issued on October 11, 2022. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Tirlochan Walia resides at 100 Denniston Street, Apartment 232, Pittsburgh, Pennsylvania, where he receives water and wastewater service from Respondent. Tr. 6, 31.

2. Respondent Pittsburgh Water and Sewer Authority is a municipal authority created in 1984 and is responsible for producing and supplying water along with maintaining and operating the water and sewer infrastructure in Pittsburgh. Effective April 1, 2018, Respondent became subject to the jurisdiction of the Commission as a regulated public utility. See 66 Pa.C.S. §§ 3201-3209. Tr. 29.

3. Under its tariff, PWSA bills its residential customer based on 1,000-gallon increments of water consumption (billing tariff). Tr. 38-40.

4. PWSA’s current billing tariff was approved by the Commission on January 11, 2022, in the rate proceedings at Docket Numbers: R-2021-3024773 [water], R-2021-3024774[wastewater] and R-2021-3024779 [stormwater]. Tr. 33, 40-41; Exhibit 3; Answer ¶ 2.

5. In relevant part, PWSA’s billing tariff as applied to residential customers provides as follows:

PART I: SCHEDULE OF RATES AND CHARGES

Section A – Rates for Metered Service

1. Minimum Charge*: Each customer will be assessed a service charge based upon the size of the customer’s meter as follows except that residential customers residing in newly constructed townhomes who are required to install a meter larger than 5/8” for fire protection and due to City ordinance requirements, may request assessment of the 5/8” minimum charge and usage allowance:

<u>Meter Size</u>	<u>Minimum Gallons</u>	<u>Per Month Rate (Effective January 12, 2022)</u>	<u>Per Month Rate (Effective January 1, 2023)</u>
5/8"	1,000	\$27.00	\$26.52

2. Consumption Charge: In addition to the Minimum Charge, the following water consumption charges will apply for each 1,000 gallons above the Minimum Gallons for each meter size:

Customer Class	Consumption Charge Rate per 1000 Gals.	
	Effective January 12, 2022	Effective January 1, 2023
Residential	\$13.10	\$14.64

The rate under this schedule applies to all customers, except public fire protection and private fire protection customers, unless otherwise specifically identified in this tariff.

** Rate applies to City of Pittsburgh Municipal Accounts, but bills will be calculated based on a phase-in factor pursuant to 71 P.S. §§ 720.211 to 720.213.*

Tr. 22, 36, 38; Exhibit 3.

6. PWSA bills a residential customer, such as Complainant, who has a 5/8" meter, a \$27.00 monthly minimum water and wastewater conveyance charge whether or not the customer uses a full 1,000 gallons of water. Tr. 39.

7. In addition to the \$27.00 monthly minimum water and wastewater conveyance charge, PWSA bills residential customers in increments of 1,000 gallons of water for any monthly consumption that is excess of 1,000 gallons of water. Tr. 40.

For example, a residential customer who consumed 2,005 gallons in a certain billing period, they will be charged the minimum charge and the charge for 1,000 gallons of water consumed. Because the customer has only consumed 5 gallons of the 1,000 gallons increment between 2,000 and 3,000 gallons, the customer is only charged for 1,000 gallons over the minimum.

Tr. 40.

8. Instances during a billing period in which a customer consumes a partial 1,000-gallon increment of water, the customer's partial consumption is carried over and added to the customer's consumption for the next billing cycle. Tr. 51.

DISCUSSION

Legal Standards

Burden of Proof

Section 332(a) of the Public Utility Code (Code) provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must

show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). 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). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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*, 413 A.2d 1037 (Pa. 1980) (*Norfolk*); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 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 with some additional 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) (*Milkie*); *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

Rates — Just and Reasonable

Section 1301 of the Code requires that a public utility's rates be just and reasonable. Section 1301 of the Code states as follows: "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 regulations or orders of the commission." 66 Pa.C.S. § 1301.

Tariffs

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; *Kossmann 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*.

Positions of the Parties

Complainant contends that PWSA's practice of billing in blocks of 1,000 gallons for water has the "potential for inequity." Tr. 16. In support of his contention, Complainant submits following:

The way PWSA bills you is they use the actual – let's say, for example, if I use 950 gallons in a month, then they will not adjust bill you on the bill – and bill me for the minimum amount and roll over the 950 gallons to the next billing period. And let's say for the next billing period I use 1,200 gallons. So, 1,200 plus 950 would be 2,150. So, they'll bill me in the next bill for an additional 2,000 gallons and carry over the other 150 in the next billing cycles.

Tr. 16-17. While PWSA would not stipulate to Mr. Walia's methodology (Tr. 19), he contends that PWSA's methodology of billing is meaningless and does not capture actual usage Tr. 23. He argues that each billing cycle should start at zero gallons of usage. Tr. 23-24. To support his argument, Mr. Walia gave the following hypothetical:

Let's say customer A, customer A had a consumption of 1,000 gallons in the first month. So, you'd be billed \$55.86.⁴ In the second month it has a billing consumption of 1,000 gallons. You'd be billed \$55.86. For the two months, the total would be

⁴ In his hypothetical, Mr. Walia did not explain his calculation/assignment of the \$55.86 as the charge for a 1,000-gallon consumption or the assignment of \$46.13 as the minimum monthly charge. PWSA's testimony and documentary evidence established that the minimum monthly charge is \$27.00 for 1,000 gallons or less of water consumption in a billing cycle. *See* Tr. 22, 36, 38; Exhibit 3.

\$111.72. Now, customer B has a consumption of 999 gallons in first month. So as for the methodology, the bill would show consumption of zero and he would be billed at a minimum of \$46.13. In month number two, customer had a consumption of 1,001 gallons. So, 1,001 plus rolled-over 999 is 2,000. So, he would be billed for \$86.69. Total of \$132.82. That means all the old customers consumed 2,000 gallons during those two months, but customer B will be billed \$21.10 more.

Tr. 24-25. Continuing with his argument, Mr. Walia contends PWSA's billing cycles should start at zero gallons rather than rolling over gallon increments under 1,000 gallons into the next billing cycle. *Id.*

PWSA maintains its "practice of billing in blocks of 1,000 gallons is dictated by our Commission-approved tariff." Tr. 33. PWSA further maintains that its billing practice is reasonable and consistent with industry standards. *Id.*

PWSA's witness, Director of Consumer Services Julie Mechling, explained the authority's billing methodology:

And we do assess a minimum charge based on the meter size on the monthly bill. For a residential customer, such as the Complainant, we charge a \$27 per month minimum water and wastewater conveyance charge. And that covers zero to 1,000 gallons of water consumed. So, whether or not the customer actually uses a full thousand gallons, that minimum is charged on a monthly basis.

Thereafter, a consumption charge is assessed. And that is based on any usage over and above the first thousand gallons. So, when a customer uses a full thousand gallons over and above the minimum, they are then charged the charge per a thousand gallons.

Tr. 38-39. Ms. Mechling further explained as follows:

For example, a residential customer who consumed 2,005 gallons in a certain billing period, they will be charged the minimum charge and the charge for 1,000 gallons of water consumed. Because the customer has only consumed 5 gallons

of the 1,000 gallons increment between 2,000 and 3,000 gallons, the customer is only charged for 1,000 gallons over the minimum.

Tr. 40. She noted that the additional five gallons would be carried over to the next billing cycle.
Tr. 39-40, 51.

Ms. Mechling also addressed Mr. Walia's alternative request that PWSA charge based upon rounding charges up or down to the nearest 1000 gallons of water consumption. According to Ms. Mechling rounding consumption is contrary to the industry standard and would result in PWSA undercharging and overcharging customers. Tr. 45. Ms. Mechling argued that rounding consumption is not in the public interest. *Id.*

Analysis

The Code requires that a public utility's rates be just and reasonable. 66 Pa.C.S. § 1301. However, the 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. Ct. 1979), *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. Ct. 1996), *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. Ct. 1997). 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. *Zucker*, 401 A.2d 1377; *Shenango Township*, 686 A.2d 910; *Kossman v.*, 694 A.2d 1147; *Brockway*.

Here, Mr. Walia argues that PWSA's billing practice results in an unreasonable outcome with his example of two hypothetical Customers A and B. Customer A uses 1000 gallons of water in each of two consecutive months, and Customer B uses 999 gallons in one month and in the second month uses 1001 gallons. According to Mr. Walia's methodology Customer A would only be billed the minimum charge for each of the two consecutive months. However, Customer B would be charged the minimum charge for the first month's 999 gallons of water consumption. In the second consecutive month, the 999 gallons of water consumption

would be carried over and added to the 1001 gallons for a total of 2,000 gallons of usage in the second month. This would result in Customer B charged for 2,000 gallons of consumption in the second month, according to Mr. Walia.

Mr. Walia's billing methodology is flawed. There is nothing in the record to indicate that PWSA carries over water consumption under the 1,000-gallon minimum to the next billing cycle for the purpose of assessing the monthly minimum water service charge. The evidence established that PWSA carries over any gallon usage above the 1,000-gallon minimum but less than a full 1,000-gallon increment. As PWSA's witness explained, a customer who consumes 2,005 gallons in a billing cycle, would be billed for 2,000 gallons, including the 1,000-gallon minimum. As mentioned above, the additional five gallons would be carried over to the next billing cycle. Tr. 39-40, 51.

Ruling

Considering Mr. Walia's flawed methodology, his claim that PWSA's practice of billing in increment of 1000-gallons, which is approved by the Commission, is unreasonable must be dismissed. This ruling is required because Mr. Walia has failed to carry his burden of proving PWSA's Commission-approved tariff is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway*.

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. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (1950).

4. A public utility's tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. Ct. 1979).

5. 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 Formal Complaint of Tirlochan S. Walia against The Pittsburgh Water and Sewer Authority at Docket No. F-2022-3032572 is dismissed for Complainant's failure to carry his burden of proof.

2. That the Secretary's Bureau shall mark Docket No. F-2022-3032572 closed.

Date: January 4, 2023

/s/
Conrad A. Johnson
Administrative Law Judge