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May 5, 2023

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Via Electronic Filing

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Tirlochan S. Walia v. The Pittsburgh Water and Sewer Authority
Docket No. F-2022-3032572

Dear Secretary Chiavetta:

Enclosed for electronic filing please find The Pittsburgh Water and Sewer Authority's Petition for Reconsideration with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

Enclosure

cc: Certificate of Service (with Enclosures)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Petition for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail

Tirlochan S. Walia
100 Denniston Street, Apt. # 232
Pittsburgh, PA 15206
(no email address)

Via Email Only

Hon. Conrad A. Johnson
Administrative Law Judge
Pa. Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222
cojohnson@pa.gov
nmiskanic@pa.gov

Date: May 5, 2023

/s/ Karen O. Moury

Karen O. Moury, Esquire
Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tirlochan S. Walia,	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2022-3032572
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	

**PETITION FOR RECONSIDERATION
OF THE PITTSBURGH WATER AND SEWER AUTHORITY**

Pursuant to Section 5.572 of the regulations of the Pennsylvania Public Utility Commission (“Commission”), The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) files this Petition for Reconsideration of the Commission Order entered on April 20, 2023 granting, in part, and denying, in part, the Exceptions of Tirlochan S. Walia (“Complainant” or “Mr. Walia”) to the Initial Decision (“I.D.”) of Administrative Law Judge (“ALJ”) Conrad A. Johnson issued on January 5, 2023. In support of this Petition, PWSA avers as follows.

I. INTRODUCTION

The April 20, 2023 Order granted, in part, and denied, in part, the Exceptions filed by the Complainant even though the clear language of the Order demonstrates that Mr. Walia did not carry his burden of proving that PWSA violated any provision of the Public Utility Code, the Commission regulations, the Authority’s tariff or a Commission order. Replete with phrases such as it “appears” or it “seems” and that PWSA “may not” have calculated Mr. Walia’s rates in accordance with its tariff, the April 20, 2023 Order inappropriately remands the matter to the Office of Administrative Law Judge (“OALJ”) to give the Complainant a second chance at carrying his burden. It is well settled that a complainant before the Commission must present

substantial evidence showing that a public utility violated a law over which the Commission has jurisdiction. Yet, when Mr. Walia sought to fulfill this burden at an evidentiary hearing held in this matter, he was unable to do so. The ALJ's I.D. properly weighed the evidence offered during the hearing and correctly determined that the Complainant had failed to demonstrate any violation of the law by PWSA. By this Petition, PWSA respectfully requests reconsideration of the April 20, 2023 Order and the issuance of an Order by the Commission denying the Complainant's Exceptions and dismissing his Complaint.

II. BACKGROUND

1. Mr. Walia filed a Formal Complaint against PWSA on May 9, 2022, alleging an "inequity" in two of the Authority's billing practices, as follows: (a) PWSA bills for water service in blocks of 1,000-gallon increments of consumption; and (b) PWSA's billing periods vary from 26 to 35 days. By way of relief, the Complainant sought to have PWSA issue its bills on the basis of actual gallons of consumption within a given month and to use the same billing period each month. Complaint, ¶ 4 and Exhibit 1. Alternatively, Mr. Walia requested that PWSA use a rounding approach so that 1,499 gallons would be billed as 1,000 gallons, while consumption between 1,500 and 2,499 gallons would be billed as 2,000 gallons, and so on. In making these requests, the Complainant acknowledged that they were in the nature of "equity" rather than "legality." Complaint, ¶ 7.c. PWSA timely filed an Answer on June 10, 2022, admitting that its billing practices are based on 1,000-gallon increments of water consumption and that its billing periods vary from 26 to 35 days. Further, PWSA averred that its practice of billing in 1,000-gallon increments of water consumption is consistent with its Commission-approved tariff, which has the force and effect of law, and that the varying billing periods comply with the Commission's regulations at 52 Pa. Code § 56.2. Answer, ¶ 4 (a) and (b). Based upon these averments, PWSA contended that the Complaint alleged no violations of the Public Utility Code, the Commission's regulations, PWSA's tariff or a Commission order, and should therefore be dismissed. Answer, ¶ 5.

3. PWSA also filed Preliminary Objections on June 10, 2022, challenging the legal sufficiency of the Complaint given that the allegations, when accepted as true, do not allege any violation of a law over which the Commission has jurisdiction. Preliminary Objections, ¶¶ 10-13. Therefore, the Complaint presented no factual issues requiring a hearing in this matter. On that basis, PWSA asserted that dismissal of the Complaint would conserve valuable resources and promote judicial economy. Preliminary Objections, ¶ 14.

4. By Interim Order dated August 3, 2022, ALJ Conrad A. Johnson granted PWSA's Preliminary Objections, in part, and denied them in part. The Interim Order granted PWSA's Preliminary Objections regarding the varying billing periods because the Commission's regulations authorize billing periods varying between 26 and 35 days. However, the Interim Order denied PWSA's Preliminary Objections addressing the practice of using 1,000-gallon increments for billing on the basis that a Commission-approved tariff provision may later be challenged as unreasonable. Since Mr. Walia was challenging the reasonableness of the tariff, the ALJ determined that PWSA could not prevail on its Preliminary Objections as a matter of law.

5. A hearing on the Complaint convened on September 14, 2022. The Complainant provided testimony regarding his concerns as to the equity of PWSA billing in 1,000-gallon increments, particularly in view of the varying billing periods. PWSA presented the testimony of Julie Mechling, Director of Customer Service, who described the practice of billing in 1,000-gallon increments of water consumption. Ms. Mechling further explained that this practice is consistent with PWSA's Commission-approved tariff, which the Authority must follow, and that it would be a departure from that tariff to bill Mr. Walia on a rounding basis. She also noted that PWSA's practice of billing in 1,000-gallon increments is consistent with industry standards. Tr. 33, 39-41.

6. The OALJ issued the I.D. on January 5, 2023 dismissing Mr. Walia's Complaint on the basis that the Complainant had failed to carry his burden of proving that PWSA's tariff provision,

which establishes the practice of billing customers in increments of 1,000 gallons for water consumption, is unreasonable.

7. By Secretarial Letter dated February 2, 2023, the Commission served correspondence on PWSA which had been filed by Mr. Walia on January 19, 2023 and noted that it was treating the letter as Exceptions. The Secretarial Letter gave PWSA until February 13, 2023 to file Reply Exceptions. In the Exceptions, the Complainant reiterated his concerns about PWSA's practice of billing customers in increments of 1,000 gallons for water consumption.

8. On February 13, 2023, PWSA filed Reply Exceptions. In that filing, PWSA contended that its practice of billing customers in increments of 1,000 gallons is consistent with its Commission-approved tariff and with prevailing water industry standards. Therefore, PWSA urged the Commission to adopt the I.D. and dismiss the Complaint.

9. By Order entered on April 20, 2023, the Commission: (a) granted, in part, and denied, in part, the Exceptions of Mr. Walia; (b) modified the ALJ's I.D.; (c) reopened the record; and (d) remanded this proceeding to the OALJ.

10. PWSA is filing this Petition for Reconsideration to request that the Commission: (a) reconsider the April 20, 2023 Order; (b) apply the proper legal standards regarding a complainant's burden of proof in its review of the Complaint and evidentiary record; (c) conclude that the Complainant did not carry his burden of proving that the Authority's practice of billing customers in increments of 1,000 gallons violates the Public Utility Code, the Commission's regulations, PWSA's tariff or a Commission order; and (d) dismiss the Complaint.

III. APPLICABLE LEGAL STANDARDS

11. Section 5.572 of the Commission's regulations authorizes the filing of petitions for reconsideration. 52 Pa. Code § 5.572.

12. Requests for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion

under the Public Utility Code to rescind or amend a prior order in whole or in part. *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (1982). What the Commission expects in petitions for reconsideration are new and novel arguments not previously heard, or considerations which appear to have been overlooked by the Commission. Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or describes a change in circumstances. *Id.*

13. Section 332(a) of the 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). In order to prevail, a complainant has the burden of showing that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown 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 (1992). That is accomplished by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1950).

14. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., Pa. Pub. Util. Comm'n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (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 and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

15. The utility company's offense must be a violation of the Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. This means that a complainant is responsible for proving that the utility has acted improperly, for providing testimony and documentary evidence, such as expert reports, and any other relevant materials necessary to support that finding, and that the Commission has the jurisdiction to provide the remedy.

IV. RECONSIDERATION IS WARRANTED

16. Reconsideration is warranted on the following grounds: (a) the Commission overlooked the applicable legal standards that obligate the Complainant to carry his burden of proving that PWSA's practice of billing for water consumption in increments of 1,000 gallons, as set forth in its Commission-approved tariff, is in violation of the Public Utility Code, Commission regulations, the Authority's tariff or a Commission order; and (b) the April 20, 2023 Order examined issues regarding the application of PWSA's tariff that were not raised by the Complaint or the Exceptions, in which the Complainant expressed his personal view, based upon the principle of equity, that customers should be billed for their actual usage each month rather than in 1,000-gallon increments.

A. The Order Fails to Apply the Requisite Legal Standards

17. In the April 20, 2023 Order, the Commission perfunctorily addressed the legal standards regarding a complainant's burden of proof that are applicable to the adjudication of a complaint filed against a public utility, as set forth above in Paragraphs 13 and 14. April 20, 2023 Order at 7.

18. Despite the routine inclusion of this language in the April 20, 2023 Order, the Commission wholly overlooked these legal standards in adjudicating the Complaint filed by Mr. Walia. Rather than reviewing the record to determine whether the Complainant had carried his burden of presenting evidence and proving that PWSA violated the law, the April 20, 2023 Order is replete with examples of the shortcomings of such evidence, as follows:

- a. “[T]he facts of PWSA’s billing method requires *clarification* as to why the Complainant’s bills *do not appear* to match the tariff-approved billing method.” April 20, 2023 Order at 14 (emphasis added).
- b. “[I]t *appears* Mr. Walia’s bills *may not* reflect the application of the tariff-approved billing method of billing in 1,000-gallon increments.” April 20, 2023 Order at 14 (emphasis added).
- c. It *appears* as if Mr. Walia *may not* have been billed in accordance with the terms of the tariff.” April 20, 2023 Order at 14 (emphasis added).
- d. “It *appears* as if the February 17, 2022 bill for 2,000 gallons *may* be incorrect.” April 20, 2023 Order at 15 (emphasis added).
- e. “Mr. Walia *may* have been incorrectly billed for 2,000 gallons usage in his November 18, 2021 bill.” April 20, 2023 Order at 15 (emphasis added).
- f. “[O]ur review of Mr. Walia’s billing data vs. actual monthly meter readings as shown in Table 1, indicates that it is *unclear* as to how Mr. Walia’s usage could potentially reach 2,000 gallons. April 20, 2023 Order at 17 (emphasis added).
- g. “Mr. Walia’s bills *do not seem* to match” the billing practice reflected in the sample bill on the Authority’s website.” April 20, 2023 Order at 17 (emphasis added).

The Commission further speculated that the February 17, 2022 bill *may* have been where Mr. Walia’s billing concerns originated. April 20, 2023 Order at 14 (emphasis added).

19. In remanding the matter to the OALJ for “clarification,” or, more accurately, giving the Complainant a second chance to make his case, the Commission suggested that the November 18, 2021 and February 17, 2022 bills “*do not appear* to have been calculated in accordance with PWSA’s

Commission-approved tariff.” April 20, 2023 Order at 17 (emphasis added). The stated purpose of the remand is “for PWSA to review the customer’s account, providing a refund to the customer, if necessary. PWSA shall also review its billing procedures to assure that its tariff is being correctly applied to the billing procedures.” April 20, 2023 Order at 17. The Commission further found that “there *may* be an issue with PWSA’s billing practice in that it *may* differ from its Commission-approved tariff.” April 20, 2023 Order at 19 (emphasis added).

20. Importantly, this proceeding involves the disposition of a Formal Complaint, which requires the Complainant to carry his burden of proving a violation of the law by PWSA. This matter is not a generic investigation of PWSA’s billing practices that *might* entail the need for clarification of how the tariff is applied or warrant a remand for additional information. To the contrary, this is a situation involving a single customer, Mr. Walia, who does not personally like the Commission-approved approach that PWSA bills for water consumption in 1,000-gallon increments. He had an opportunity to show during the evidentiary hearing that this billing practice, which comports with PWSA’s tariff, is unreasonable. As he did not carry that burden, the I.D. properly dismissed the Complaint. It is not appropriate for the Commission to now remand a complaint to the OALJ for another hearing and a “clarification” of the facts that the complainant failed to present at the hearing showing a violation by the utility.

21. Notably, the April 20, 2023 Order itself did not find that Mr. Walia carried his burden. As shown by the many excerpts quoted above from the April 20, 2023 Order, the Commission instead speculated as to the possibility that PWSA may not have calculated Mr. Walia’s charges in accordance with the tariff and as to where his concerns over the billing practices may have originated. Indeed, the Commission concluded that “there may be an issue with PWSA’s billing practice in that it may differ from its Commission-approved tariff for this Complainant.” April 20, 2023 Order at 19.

Despite not concluding Mr. Walia had carried his burden of proving a violation of the law by PWSA, the Commission inexplicitly failed to dismiss the Complaint.

22. Giving a customer a second bite at the apple in trying to prove a violation of the Public Utility Code, a Commission regulation, the utility's tariff or a Commission order is a tremendous waste of valuable resources. Since PWSA is a municipal utility without shareholders, the Authority is funded solely by its ratepayers who will be required to absorb the financial burden of utilizing resources to prepare for and participate in a further evidentiary hearing so that Mr. Walia can try again to carry his burden of proof.

23. Further, such action is a slippery slope in that many complaints that are reviewed by the Commission could have had a different outcome if the complainant had presented different or more evidence. If the April 20, 2023 Order is left intact, public utilities will be continually at risk of having matters returned to the OALJ for "clarification" of the facts when a complainant fails to carry his or her burden.

24. Therefore, the Commission should reconsider its April 20, 2023 Order, adopt the I.D. and dismiss Mr. Walia's Complaint.

B. Application of the Tariff Provision Was Not Before the Commission

25. Any question of the proper application of PWSA's tariff was not before the Commission either through Mr. Walia's Complaint or his Exceptions. Mr. Walia only questioned the Authority's billing practice from his perspective of "equity" that a water utility should bill a customer based on the actual usage for a particular month, rather than billing the customer in 1,000-gallon increments.¹ Therefore, the Commission's in-depth inquiry into the way that PWSA applies the billing practice in the computation of charges imposed upon customers was inappropriate.

¹ The Commission lacks jurisdiction to provide equitable relief. *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014, at 24-25).

26. Even if Mr. Walia had challenged PWSA's application of its tariff, the record establishes that the Authority followed its provisions. Under the minimum charge provisions in PWSA's tariff, if a customer uses less than 1,000 gallons, the customer is still charged for 1,000 gallons of usage. When the practice of billing in 1,000-gallon increments comes into play is when the customer uses 1,000 gallons or more. As Ms. Mechling testified during the hearing, a customer who uses 1,005 gallons in a month is only charged for 1,000 gallons. Under the approach of billing in 1,000-gallon increments, the additional 5 gallons rolls to the next month, and possibly beyond, and is only billed to the customer when the customer reaches a full 2,000 gallons. Tr. 39-40.

27. As Mr. Walia did not challenge PWSA's application of its tariff, and the tariff was properly applied to Mr. Walia's usage, no purpose is served by remanding this matter to the OALJ for further hearings.

V. CONCLUSION

WHEREFORE, on the basis of the foregoing, The Pittsburgh Water and Sewer Authority respectfully requests that the Commission grant this Petition for Reconsideration, adopt the Initial Decision issued by the Office of Administrative Law Judge and dismiss the Complaint filed by Tirlochan S. Walia.

Respectfully submitted,

/s/ Karen O. Moury

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Date: May 5, 2023

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