

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eugene and Susan McLaughlin	:	
	:	
v.	:	C-2022-3035043
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Initial Decision finds that Aqua Pennsylvania Wastewater, Inc. did not violate the Public Utility Code, Commission regulations or a Commission order by charging the Complainants the flat rate approved by the Commission, or by not installing a wastewater meter at the residence of the Complainants. This Initial Decision also finds that the explanation given to the Complainants for the rate increase was not unreasonable or inadequate service.

HISTORY OF THE PROCEEDING

On September 7, 2022, Eugene McLaughlin and Susan McLaughlin (“the McLaughlins” or “Complainants”) filed a Formal Complaint (Complaint) against Aqua Pennsylvania Wastewater, Inc. (“APW” or “Respondent” or “Company”) with the Pennsylvania Public Utility Commission (Commission). The Complainants use well water and challenged the amount they are charged by APW, asserting that Aqua charges a 70% increase over previous bills. As an example, the Complainants stated that in April of 2022, they paid \$38.53 to Aqua and that in August of 2022, they paid \$66.06. The Complainants also assert in the Complaint

that APW has refused to explain the calculation of the charges and that when they requested that APW install a wastewater meter, the Company responded that “they will not do that.” (Complaint at 3).

On September 27, 2022, APW filed an Answer to the Complaint (Answer). The Company admitted that it provides wastewater services to the Complainants, that the Complainants are charged a flat rate, and that the Complainants’ rate has increased. APW stated in the Answer that the Commission approved the rate increase, effective May 19, 2022, at docket numbers R-2021-3027385 and R-2021-3027386. The Company further stated in the Answer that it does not install meters on customer-owned wells and that, at all times, it provided reasonable and adequate service to the Complainants.

By Initial Telephonic Hearing Notice dated September 29, 2022, an Initial Call-In Telephonic Hearing was scheduled for November 17, 2022, and the matter was assigned to me. A prehearing order was issued on October 3, 2022.

On October 4, 2022, an Entry of Appearance was filed by Margaret A. Morris, Esquire to represent APW. On October 31, 2022, APW requested a continuance due to counsel’s unavailability. The continuance was granted, and a Telephone Hearing Cancellation/Reschedule Notice was issued on November 9, 2022, setting a hearing for February 9, 2022. A prehearing order was issued November 21, 2022. Due to a conflict on my schedule, on December 5, 2022, a Telephonic Hearing Cancellation/Reschedule Notice was issued setting a hearing for February 15, 2022. A prehearing order was issued on December 12, 2022.

On February 15, 2023, the hearing convened as scheduled. The Complainants appeared *pro se*. Mr. McLaughlin testified on behalf of the Complainants. APW was represented by Attorney Morris, accompanied by Mary Hopper, Esquire. Christopher Manning, Aqua finance and rate analyst, testified on behalf of APW.

The following Exhibits were admitted into the record:

- Respondent Exhibit 1 – Customer Information Screenshot
- Respondent Exhibit 2 – 6/3/2022 Tariff Approval Letter
- Respondent Exhibit 3 – Notice of Proposed Wastewater Rate Change
- Respondent Exhibit 4 – List of Changes and Rate Schedule
- Respondent Exhibit 5 – April to December 2022 Bills

The record closed on February 21, 2023, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainants are Eugene and Susan McLaughlin.
2. The Respondent is Aqua Pennsylvania Wastewater, Inc., a utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. Effective June 19, 2020, APW began providing wastewater service to the McLaughlins at their home in East Norriton, Pennsylvania. Respondent Exhibit 1.
4. The East Norriton Division of APW is Rate Zone 10 in the APW tariff. Tr. 30; Respondent Exhibit 4.
5. Prior to APW's acquisition of the wastewater system, East Norriton Township provided wastewater services to the McLaughlins. Tr. 13-14.
6. On August 20, 2021, APW issued by mail a notice to the Complainants and other East Norriton customers that APW had filed a proposed tariff with the Commission to request an increase in wastewater rates (Commission Docket Numbers R-2021-3027385, R-2021-3027386). Respondent Exhibit 3, 4; Tr. 25, 26; Respondent Exhibit 3.

7. The August 20, 2021, notice advised that anyone who wished to challenge the request to raise wastewater rates could send a letter to the Commission, attend or present testimony at a Public Input Hearing or become a party by filing a formal complaint. *Id.*

8. The McLaughlins did not participate in the rate case proceedings at docket numbers R-2021-3027385, R-2021-3027386. Tr. 14.

9. By Opinion and Order dated May 16, 2022, the Commission approved the proposed tariff and authorized APW to increase wastewater service annual revenue by approximately \$18,740,878, to become effective for service rendered on or after May 19, 2022. Respondent Exhibit 2; Tr. 28-29.

10. The Township charged a flat rate of \$38.53 per month to wastewater customers with wells. Tr. 13.

11. APW charges a \$66.06 flat rate for customers with wells. Tr. 9, 30; Respondent Exhibit 4.

12. The APW \$66.06 flat rate for customers with wells was approved by the Commission. Respondent Exhibits 2, 3.

13. The Complainants were billed as follows:

- a. Bill Date April 27, 2022 - \$38.53
- b. Bill Date May 26, 2022 - \$38.53
- c. Bill Date June 27, 2022 - \$43.12
- d. Bill Date July 26, 2022 - \$66.06
- e. Bill Date August 25, 2022 - \$66.06

Respondent Exhibit 5; Tr. 8, 12-13.

14. The \$43.12 bill is a prorated bill reflecting the new APW rate for part of the billing period. Tr. 44.

15. The Complainants requested that APW install a wastewater meter and the company responded that it would not. Tr. 14.

16. The Complainants did not have a wastewater meter when wastewater services were provided by the Township. Tr. 14.

17. The tariff does not include a provision for the installation of meters for customers with wells. Respondent Exhibits 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). The Complainant must establish his case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

As a matter of law, to establish a legally sufficient claim, 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. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). 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 Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

The Code defines “service” as:

[s]ervice, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them[.]

66 Pa.C.S. § 102.

The McLaughlins question APW charging a flat rate for customers with wells. Tr. 9. They also question the reasonableness of what they calculate as a 71% increase over previous rates.

The Complainants also assert that the Company did not provide reasonable service. Particularly, they contend that that the company did not provide a sufficient explanation of its rate increase and that when they asked the company about installing a wastewater meter, the company representative responded that APW would not install a wastewater meter.

APW asserts that there are no violations. The Company contends that the Complainants cannot prevail because the Commission approved the flat rate increase. APW also asserts that the Commission specifically determined that the company need not install wastewater meters for customers with wells.

While it is understandable that the Complainants find the increase in their flat rate from \$38.53 to \$66.06 significant, the Commission approved the rate increase and APW submitted a tariff reflecting that approval. Also, the Commission approved the tariff that does not require installation of a wastewater meter for customers that have a well and do not have a water meter.

Further, in the rate case proceedings, the Commission agreed with the recommendation of the Administrative Law Judge that rejected a proposal to require installation or further study of secondary meter installation, in part because there was no showing that the benefits would outweigh the costs. *See Pa. Pub. Util. Comm'n v Aqua Pa. Wastewater, Inc.*, Docket Number R-2021-3027385 (Opinion and Order entered May 12, 2022) at 273-275. The Commission also noted that those proposing a deduct meter study or program did not explain: (1) Aqua's authority to place a meter on a person's water line; (2) how higher-usage customers could be "incentivized" to opt-in in the future; nor (3) why wastewater cost of service should be increased to cover the cost of installing, maintaining, and reading water meters for wastewater service. The Commission also did not dispute APW's assertion that the installation of a meter to measure usage deductions would increase the revenue requirement and not reduce the revenue requirement subject to recovery. *Id.* at 275.

As previously noted, a 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. APW acted in compliance with its tariff. The Complainants have not established that the tariff in question is unreasonable.

Also, when the Complainants called APW to question the rate increase, an APW representative told the Complainants that the Commission sets the rates. Tr. 9, 10. Such a response is not unreasonable service. The Complainants cannot prevail here.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. 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); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

4. The Complainants did not establish that the tariff provisions or related Commission Order regarding the rate increase and wastewater meter are unreasonable. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

5. The offense must be a violation of the Public Utility Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

6. Public utilities must furnish and maintain adequate, efficient, safe, and reasonable service and facilities that are in conformity with the regulations and orders of the commission. 66 Pa.C.S. § 1501.

7. The Complainants have not established that the rate increase or Company responses to their inquiries regarding installation of a wastewater meter or the rate increase were in violation of the Public Utility Code, a Commission Order or the applicable regulations. *Id.*

