

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elouise Coleman and	:	
Robyn Coleman-Pleasant	:	
	:	C-2022-3036338
v.	:	C-2022-3036340
	:	
Aqua PA Wastewater, Inc.	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses the Formal Complaints filed by Elouise Coleman and Robyn Coleman-Pleasant against Aqua PA Wastewater, Inc. The Complainants failed to satisfy their burden of demonstrating that Aqua PA Wastewater, Inc. violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with respect to the wastewater service provided to them at their residences.

**HISTORY OF THE PROCEEDING**

On October 21, 2022, Elouise Coleman and Robyn Coleman-Pleasant (“Complainants” or “Ms. Coleman and Ms. Coleman-Pleasant”) filed Formal Complaints<sup>1</sup> with the Pennsylvania Public Utility Commission (“Commission”) against Aqua PA

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<sup>1</sup> The Complaints were served by the Secretary's Bureau on October 24, 2022.

Wastewater, Inc. (“Aqua” or “Respondent”).<sup>2</sup> In their Formal Complaints, Complainants alleged, *inter alia*, that they did not receive notice of a 72.55% rate increase. As relief, Complainants request that Aqua be required to lower their bills by 72.55% and be required to properly notify residents prior to any rate increase.

On November 14, 2022, Aqua timely filed an Answer and New Matter in which it acknowledged that it provides wastewater service to the Complainants and averred that they are billed for service at a rate established pursuant to a Commission-approved tariff (the “WW Tariff”). Further, in its New Matter, Aqua averred, *inter alia*, that the Complainants did not have standing to bring a Complaint on behalf on other residents.

On December 27, 2022, a Corrected Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was electronically served on both parties scheduling a call-in telephonic evidentiary hearing on February 2, 2023, at 1:30 p.m., and assigning me as the presiding officer.

The hearing was held as scheduled on February 2, 2023. Margret Morris, Esquire attended on behalf of Aqua, along with a witness for Aqua. Ms. Coleman and Ms. Coleman-Pleasant appeared for the hearing, *pro se*. Aqua submitted five exhibits that were entered into the record. Ms. Coleman and Ms. Coleman-Pleasant did not submit any exhibits.

The record in this case closed on March 9, 2023, when I received my copy of the transcript.

#### FINDINGS OF FACT

1. The Complainants are Elouise Coleman and Robyn Coleman-Pleasant.
2. The Respondent is Aqua PA Wastewater, Inc.

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<sup>2</sup> The Formal Complaints were consolidated prior to assignment to the Office of Administrative Law Judge.

3. Ms. Coleman receives wastewater service from Aqua at her home located at 220 Orchard Lane, East Norriton, Pennsylvania 19401. Tr. 10.

4. Ms. Coleman-Pleasant receives wastewater service from Aqua at her home located at 2906 Stoney Creek Road, East Norriton, Pennsylvania 19401. Tr. 27.

5. In 2021, Aqua sought a rate increase for its wastewater operations at Docket No. R-2021-3027336. Tr. 36.

6. Aqua sent written notice of the proposed rate increase to all customers by mail on August 20, 2021. Tr. 37; Aqua Exh. 1.

7. There was no indication that the proposed rate increase notices sent to the Complainants were returned by the United States Postal Service as undeliverable. Tr. 37.

8. On May 16, 2022, the Commission issued an Opinion and Order which approved a rate increase for Aqua's wastewater division, including the East Norriton Division. Tr. 38.

9. The rate increase approved by the Commission was not the original proposal that Aqua had submitted. Tr. 38.

10. Aqua submitted amended tariffs to the Commission in compliance with the Commission's June 16, 2022, Opinion and Order. Tr. 38-39.

11. On June 3, 2022, the Commission's Secretary's Bureau issued a letter that indicated that the amended tariffs were in compliance with the approved rates by the Commission and were effective May 19, 2022. Tr. 39; Aqua Exh. 2.

12. The Complainants' residences in the East Norriton Division are in Rate Zone 10 of Aqua's WW Tariff. Tr. 40; Aqua Exh. 3.

13. Rate Zone 10 are billed monthly with a customer charge of \$35.57 and a usage charge of \$7.726 per 1,000 gallons. Tr. 40; Aqua Exh. 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.P.U.C. 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*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701. In this proceeding, the Complainants have alleged that Aqua violated the Public Utility Code, or a rule, regulation or order issued by the Commission. 66 Pa.C.S. § 1501. Therefore, the Complainants have the burden of proof in this proceeding.

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, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth 1982). Moreover, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. Of Rev.*, 166 A.2d 96 (Pa. Super 1960). A complainant cannot establish a case merely by stating his or her personal beliefs,

since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth. 1991); 66 Pa.C.S. § 316.

### Notice of Rate Increase

Both Complainants indicated that their wastewater bills had increased approximately 72.55%. Both Ms. Coleman and Ms. Coleman-Pleasant allege that they did not receive notice of this increase from Aqua.

At no point in this proceeding did the Complainants identify any provision of the Public Utility Code, or any Commission regulation, or order violated by Aqua, nor did they argue that their wastewater bill was miscalculated, or that the service provided to them by Aqua was unsatisfactory or defective.

Aqua presented the testimony of Christopher Manning, a Finance and Rates Analyst. Mr. Manning testified that in 2021, Aqua sought a rate increase for its wastewater operations at Docket No. R-2021-3027336. Tr. 36. Written notice of the proposed rate increase was sent to all customers by mail on August 20, 2021. Tr. 37; Aqua Exh. 1. There was no indication that the notices to the Complainants were returned by the United States Postal Service as undeliverable. Tr. 37.

Further, Mr. Manning testified that on May 16, 2022, the Commission issued an Opinion and Order which approved a rate increase for its wastewater division including the East Norriton Division. Tr. 38. Mr. Manning noted that the rate increase approved by the

Commission was not the original proposal that Aqua had submitted. Tr. 38. Aqua submitted amended tariffs to the Commission in compliance with the Commission's Opinion and Order. Tr. 38-39. Moreover, Mr. Manning stated that on June 3, 2022, the Commission's Secretary's Bureau issued a letter that indicated that the amended tariffs were in compliance with the approved rates by the Commission and were effective May 19, 2022. Tr. 39; Aqua Exh. 2. The Complainants' residences in the East Norriton Division are in Rate Zone 10 of Aqua's WW Tariff. Tr. 40; Aqua Exh. 3. Rate Zone 10 are billed monthly with a customer charge of \$35.57 and a usage charge of \$7.726 per 1,000 gallons. Tr. 40; Aqua Exh. 3.

According to the Public Utility Code, a public utility must provide 60-day notice of any proposed changes to their Commission-approved tariff. 66 Pa.C.S. § 1308(a). In this matter, Aqua provided the proper notice to its customers by mailing a notice on August 20, 2021, and there was no indication that the notices mailed to the Complainants were returned to Aqua as undeliverable. While the Complainants argue that they were not informed of the exact amount of the rate increase in the notice, there is nothing in the Code that requires such notice. Because the rate proceeding was litigated and the Commission ultimately has the authority to approve rates that it believes are just and reasonable, there is an amount of uncertainty of the exact rate that will be approved when the utility initially sends out notice of a proposed rate increase.

To the extent that the Complainants challenge Aqua's Commission-approved, tariffed rates for service, they have the burden of proving by a preponderance of the evidence that the rates are unjust, unreasonable or in violation of a Commission regulation or order. *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189 (Pa. Cmwlth. 1993); 66 Pa.C.S. §§315(a), 332(a), 1301. Complainants have not demonstrated by a preponderance of the evidence that Aqua violated any provision of the Code or the regulations of the Commission. The Complainants also did not meet their burden of proving that the Commission-approved tariff was unreasonable or unjust. Consequently, it is appropriate to dismiss their Formal Complaints.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. 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.P.U.C. 196 (1990).
4. "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*, 70 A.2d 854 (Pa. 1950).
5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.
6. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.
7. "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); *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).
8. A party that challenges a Commission-approved tariff has the burden of proving by a preponderance of the evidence that the rates are unjust, unreasonable or in violation

of a Commission regulation or order. *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189 (Pa. Cmwlth. 1993); 66 Pa.C.S. §§315(a), 332(a), 1301.

9. The Complainants have failed to demonstrate that Aqua 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 Formal Complaint of Elouise Coleman in *Elouise Coleman v. Aqua PA Wastewater, Inc.* at Docket No. C-2022-3036338 is dismissed;
2. That the Formal Complainant of Robyn Coleman-Pleasant in *Robyn Coleman-Pleasant v. Aqua PA Wastewater, Inc.* at Docket No. C-2022-3036340 is dismissed;
3. That the docket at Docket No. C-2022-3036338 be marked closed; and
4. That the docket at Docket No. C-2022-30363340 be marked closed.

Date: June 2, 2023

\_\_\_\_\_/s/  
Marta Guhl  
Administrative Law Judge