

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held June 15, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Tirlochan S. Walia

F-2022-3032572

v.

The Pittsburgh Water and Sewer Authority

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition), filed by the Pittsburgh Water and Sewer Authority (PWSA or Authority) on May 5, 2023, seeking reconsideration of the Order entered on April 20, 2023 (*April 2023 Order*), relative to the above-captioned proceeding. No Answer was filed. For the reasons set forth below, we shall deny the Petition.

I. History of Proceeding

On May 9, 2022, Mr. Walia filed a Formal Complaint (Complaint) with the Commission against PWSA.¹ The Complaint alleges there is an inequity in two of PWSA's billing practices, specifically: (1) its billing in blocks of 1,000-gallon increments for water consumption; and (2) billing periods that vary from 26-35 days. Complaint ¶ 4. The Complainant contends that the billing practice is unreasonable, leading to inequitable results.

For relief, the Complainant asks the Commission to order PWSA to do the following:

- (1) Bill by gallons and maintain a constant calendar date billing period.
- (2) 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.

PWSA filed an Answer² and Preliminary Objections on June 10, 2022. PWSA averred in pertinent part as follows:

¹ The Complaint seeks timely review of the Commission's Bureau of Consumer Services' (BCS) decision entered on April 4, 2022, at BCS No. 3823111, which dismissed the Complainant's informal complaint.

² PWSA'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. I.D. at 2, n. 2.

PWSA's Billing Practices

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

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

PWSA argues that the 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, PWSA requests that the Complaint be dismissed. Answer at 5-6.

In its Preliminary Objections, PWSA argued, in part, that the Complaint was legally insufficient and there was no need for a hearing as there was no violation of the Code, Commission Regulations or Orders for the following reasons:

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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.

* * *

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.

* * *

Preliminary Objections ¶¶ 10-13. (Footnotes omitted).

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

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

On August 3, 2022, the ALJ 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)* in which he: (1) granted PWSA's Preliminary Objections to the extent that the Commission's Regulations authorize billing periods varying between 26 and 35 days (I.D. at 4);⁴ and (2) denied the Preliminary Objections regarding PWSA's tariff pertaining to billing in increments or blocks of 1,000 gallons of consumption on the basis that a utility's Commission approved tariff is *prima facie* reasonable. However, the ALJ concluded that 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. *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981) (*Brockway*); *see, First Interim Order* at 6.

On September 14, 2022, the telephone hearing convened as scheduled. The Complainant appeared, self-represented, and testified on his own behalf. The 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. I.D. at 5.

The record was closed by an interim order on October 11, 2022.

In an Initial Decision issued on January 5, 2023, ALJ Conrad A. Johnson denied and dismissed the Complaint because the Complainant did not meet his burden of

⁴ 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. The ALJ found that PWSA's billing periods do not constitute a violation of the Code, the Commission's Regulations, or a Commission Order.

establishing that PWSA's Commission-approved billing tariff was no longer reasonable or that the application of the existing billing tariff was applied unreasonably. I.D. at 1, 12-13.

The Complainant filed Exceptions on January 19, 2023. PWSA filed Replies to Exceptions on February 13, 2023.

In the *April 2023 Order*, we: (1) granted in part, and denied, in part, the Exceptions filed by Mr. Walia; (2) modified the Initial Decision; and (3) remanded the case back to the Office of Administrative Law Judge for clarification, and/or receipt of additional evidence. *April 2023 Order* at 19.

As previously noted, PWSA filed the instant Petition on May 5, 2023. No Answer to the Petition was filed.

II. Discussion

A. Legal Standards

Initially, we note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also, see generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders.

Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, *12-13:

A Petition 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 this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id.* at *13.

B. PWSA’s Petition

In its Petition, PWSA avers that: (1) the Commission overlooked the applicable legal standards that obligate the Complainant to carry his burden of proving

that PWSA's billing practice of billing for water consumption in increments of 1,000 gallons is in violation of the Code, Commission Regulations, the Authority's tariff; and (2) the *April 2023 Order* examined issues regarding the application of PWSA's tariff that were not raised by the Complaint or the Exceptions.

1. Application of Legal Standards in the *April 2023 Order*

a. *April 2023 Order*

In the *First Interim Order*, the ALJ denied PWSA'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. The ALJ explained that 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. I.D. at 4.

In the *April 2023 Order*, the Commission disagreed with the ALJ's finding that Mr. Walia has failed to carry his burden of proving that PWSA's Commission-approved tariff is no longer reasonable or the application of the existing tariff at issue is being applied unreasonably. PWSA testified that it was billing Mr. Walia in accordance with its tariff. PWSA also testified that it used a billing procedure not found in the tariff where PWSA carried over usage for customers into the future month for amounts greater than the minimum 1,000-gallon increment, but less than a full 1,000 gallons. *April 2023 Order* at 12. The *April 2023 Order* sought additional clarification regarding PWSA's application of its tariff to its billing method. The *April 2023 Order* determined that Mr. Walia's bills were not in accordance with the tariff on at least two occasions. *April 2023 Order* at 11-14.

b. PWSA’s Petition

In its Petition, PWSA maintains that the Commission overlooked the application of the legal standards in adjudicating the Complaint filed by Mr. Walia. PWSA argues that 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 2023 Order* includes examples of shortcomings of the evidence. Petition at 6-9.

PWSA contends that in remanding the order to the Office of Administrative Law Judge (OALJ), the Commission is giving the Complainant a second chance to make his case. PWSA avers that “giving a customer a second bite at the apple” is a “tremendous waste of valuable resources.” Petition at 9.

c. Disposition

Before we address our disposition on this first issue, we note, as stated previously, that Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. The Commission will not reconsider its previous decision based on arguments that have already been made. The second step is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. Based upon our evaluation of the record and the Parties’ positions in each particular case, we will determine if there is a sufficient basis for us to exercise our discretion to amend or rescind a prior Order, in whole or in part.

The purpose of the remand was not to give Mr. Walia “another bite at the apple” as PWSA alleged, but rather an opportunity for PWSA to explain why Mr. Walia was not billed in accordance with PWSA’s tariff and why the carryover of usage from one month to the next occurs when this provision is not in PWSA’s tariff. PWSA testified that they are billing in accordance with their tariff. (Tr. at 38). However, upon review of the billing records, it appears this is not the case for Mr. Walia for at least two months of billing.

Mr. Walia noted in his Complaint as follows: “Feb. 2022 bill was for 2,000 gallons and covered 32 days, I was to[l]d on phone that actual usage was 1,050 gallons – that means for 50 gallons I was billed an additional 1,000 gallons.” Complaint at 1.

Mr. Walia did not indicate how the error occurred in his bill, because he did not have the complete meter data. Upon review of the records provided by the PWSA, we concluded that Mr. Walia was correct, the bill does not match the meter data. The meter data (which included the time period covered by the February 2022 bill) was supplied by PWSA as Exhibit 6.

Mr. Walia testified that the sample bill on PWSA’s website indicated that a customer would be charged for each additional 1,000 gallon over the minimum, not for consumption less than 1,000 gallons. Tr. at 22-23. We note that this does not match PWSA’s explanation in its testimony. Tr. at 39. Mr. Walia testified that each billing cycle should begin at zero, which would be in accordance with the tariff. Tr. at 23-24.

When asked about the February 2022 bill, PWSA witness Ms. Julie Mechling responded, “The Complainant expressed concern that he was billed for 2,000 gallons of water when he had consumed 1,050 gallons of water.” Ms. Mechling did not address Mr. Walia’s concern regarding the billing error, but rather stated:

So the Complainant seems to understand PWSA's PUC-approved usage billing practices but wishes that PWSA rounded customer's usage for billing. PWSA has agreed in its most recent 2021 rate case to consider alternative rate structures, specifically the removal of minimum charges in our next future base rate case. So we did suggest that Mr. Walia file a formal complaint in PWSA's next base rate case to suggest how his concerns could be validated in a future rate structure for Pittsburgh Water and Sewer.

Tr. at 42-43.

PWSA acknowledged that Mr. Walia had indicated the problem with his February 17, 2022, bill in his Complaint, noting that Mr. Walia had attached incomplete usage data to his Complaint. Tr. at 43. However, PWSA did not explain why the bill did not match the usage data. The usage data indicates that the bill is incorrect – and Mr. Walia was not billed in accordance with the tariff. We directed remand as an opportunity for PWSA to explain why this meter data was not used to determine Mr. Walia's usage. *April 2023 Order* at 18.

Ms. Mechling was asked “Has your review of the Authority's records revealed any errors by the Authority in applying the tariff-approved rates to [the] Complainant?” Ms. Mechling replied, “No it has not.” Tr. at 44. Ms. Mechling stated, “Nothing indicates that there were errors by PWSA in the application of the applicable rates to the Complainant's consumption.” *Id.* And yet, in our review, two of Mr. Walia's bills contain an issue where actual usage measured by the meter does not match the amount of usage Mr. Walia was billed for. Once again, the purpose of the remand is for PWSA to explain this contradiction.

PWSA has testified that the Authority carries over any gallon usage above the 1,000-gallon minimum but less than a full 1,000-gallon increment. PWSA averred that a customer who consumes 2,005 gallons in a billing cycle, would be billed for 2,000

gallons, including the 1,000-gallon minimum, and the additional five gallons would be carried over to the next billing cycle. Tr. at 51. We note that this is not in the tariff. We require PWSA to explain why this billing practice is carried out when it is not in accordance with the tariff.

PWSA asserted that the *April 2023 Order* “is replete with examples of the shortcomings of such evidence” regarding Mr. Walia’s burden of proof. PWSA did not directly address the errors in Mr. Walia’s bills that were illustrated using the data provided by PWSA in Exhibits 5 and 6. Rather than address the questions regarding the application of the tariff to Mr. Walia’s account and the billing errors, PWSA recommended that Mr. Walia file a complaint in PWSA’s next rate case. Tr. at 42-43.

Upon review, we find that PWSA has not satisfied the *Duick* standards concerning the issue of legal standards regarding Mr. Walia’s billing by PWSA. PWSA argues that the *April 2023 Order* ignored the legal standards applicable to the case. PWSA claims that Mr. Walia has failed to prove that the 1,000-gallon billing procedure used by PWSA is unreasonable. Petition at 6-9. This argument is not new and was previously presented in PWSA’s testimony, Preliminary Objection and Reply Exceptions. *See, April 2023 Order* at 10; PWSA R.Exc. at 3-4. We did not “ignore” the legal standards applicable to Mr. Walia’s case. Rather, considering the apparent errors in Mr. Walia’s bills, we reviewed the application of the tariff. We noted that at least two of Mr. Walia’s bills were not in accordance with the tariff. We also noted a billing procedure (the rollover of amounts greater than 1,000 but less than 2,000) that PWSA testified it was using is not included in the Authority’s tariff. We remanded the case to the OALJ to obtain further information from PWSA that could clarify the billing discrepancies and demonstrate the reasonableness of the application of the tariff. PWSA asserts that it is billing in accordance with its tariff, but based upon the meter data provided by the Company, we cannot agree in the case of at least two of Mr. Walia’s monthly bills.

We find that PWSA’s arguments regarding the legal standards applicable to Mr. Walia’s account with PWSA are a repeat of the arguments it made in its Preliminary Objections, Briefs, Reply Briefs, and Reply Exceptions and thus do not demonstrate a new and novel argument or consideration that has not previously been heard or has been overlooked by the Commission. Accordingly, for all of the above-mentioned reasons, we shall decline to exercise our discretion to disturb the *April 2023 Order* on this basis.

2. Application of the Tariff

a. *April 2023 Order*

In his response to PWSA’s Preliminary Objections, the ALJ concluded that 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. *First Interim Order* at 6 (citing *Brockway*). *April 2023 Order* at 5.

In the *April 2023 Order*, we noted the following regarding 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; *Kossman 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.

April 2023 Order at 9 (citing I.D. at 9).

PWSA averred throughout the proceeding that Mr. Walia was billed in accordance with the tariff. On at least two occasions, Mr. Walia's bills do not match the billing method defined in the tariff. In addition, PWSA described a billing method for amounts above the minimum 1,000 gallons but less than a full thousand more that is not found in the tariff. The application of the tariff became of interest because of the difference between how Mr. Walia was billed and what was prescribed in the tariff. *April 2023 Order* at 14.

b. PWSA's Petition

PWSA avers that any question of the proper application of PWSA's tariff was not before the Commission either through Mr. Walia's Complaint or his Exceptions. PWSA provides that Mr. Walia only questioned the Authority's billing practice of billing the customer in 1,000-gallon increments rather than for actual usage. PWSA argues that the Commission's inquiry into the application of PWSA's tariff was inappropriate. *Petition* at 9.

PWSA maintains that Mr. Walia was billed in accordance with the tariff. PWSA explains that if a customer uses less than 1,000 gallons, the customer is still charged for 1,000 gallons of usage. PWSA explains further that if a customer uses 1,005 gallons in a month, the customer is only charged for 1,000 gallons and the additional five (5) gallons rolls to the next month, and possibly beyond,⁵ and is only billed to the customer when the customer reaches a full 2,000 gallons. *Petition* at 10.

⁵ We note that this provision is not in the tariff and the qualifying statement of "possibly beyond" is new information not found previously in the record.

c. Disposition

Upon review, we conclude that PWSA's arguments in its Petition are not new or novel, that we have thoroughly considered PWSA's arguments concerning the application of its tariff, and that our decision to remand the case to the OALJ is supported by substantial evidence in the record. There is a disconnect between what is prescribed in PWSA's tariff and Mr. Walia's account billing and/or what occurred for at least two months of Mr. Walia's recent billing. The Commission's questions regarding how PWSA applied its tariff to Mr. Walia's account billing are appropriate and necessary. The Commission is asking PWSA, by remand, to clarify why Mr. Walia's bills do not match the tariff. PWSA's arguments regarding the application of the tariff do not demonstrate a consideration that has not previously been heard or has been overlooked by the Commission. Thus, we shall decline to reconsider our *April 2023 Order* on this basis.

III. Conclusion

Based upon our review of the record and the applicable law, we shall deny PWSA's Petition which seeks the following relief: (1) reconsideration of the *April 2023 Order*; (2) adoption of the Initial Decision; and (3) dismissal of the Complaint filed by Mr. Walia; **THEREFORE,**

IT IS ORDERED:

That the Petition for Reconsideration filed by the Pittsburgh Water and Sewer Authority on May 5, 2023, is denied, consistent with the discussion in this Opinion and Order.

BY THE COMMISSION

A handwritten signature in black ink, reading "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 15, 2023

ORDER ENTERED: June 15, 2023