

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Edgar N. Persons III	:	
	:	
v.	:	C-2022-3036138
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Edgar N. Persons III because he failed to satisfy his burden of proving that Aqua Pennsylvania Wastewater, Inc. violated its tariff, the Public Utility Code, or a Commission Regulation or Order.

HISTORY OF THE PROCEEDING

On October 11, 2022, Edgar N. Persons III (Mr. Persons or Complainant) filed a Formal Complaint (Complaint) against Aqua Pennsylvania Wastewater, Inc. (Aqua or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Persons objected to his wastewater bills being based on his water usage. Mr. Persons requested that Aqua install a wastewater meter.

On November 7, 2022, Aqua filed an Answer and New Matter to the Complaint along with a Notice to Plead. In its Answer, Aqua admitted in part, and denied in part, various material allegations of the Complaint. Aqua admitted that it provided wastewater service to the Complainant and averred that he is being billed in accordance with Aqua's Commission-

approved wastewater tariff. Aqua also averred that it does not install wastewater meters, and, at all times, it provided reasonable and adequate service to the Complainant.

In its New Matter, Aqua averred that Mr. Persons is being billed in accordance with Aqua's Commission-approved tariff, which has the full force of law, and is binding on the utility and the customer. Aqua requested that the Complaint be dismissed.

On November 15, 2022, the Complainant filed a response to Aqua's New Matter reiterating his argument that he should not be billed for wastewater that does not enter the wastewater system.

By Hearing Notice dated November 30, 2022, an Initial Call-In Telephonic Hearing was scheduled for March 10, 2023, and the matter was assigned to me.

A Prehearing Order was issued on February 24, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to the proceeding.

On March 10, 2023, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Complainant did not present any exhibits. Aqua was represented by Margaret Morris, Esquire.

The record closed on April 4, 2023, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Edgar N. Persons III.
2. The Respondent is Aqua Pennsylvania Wastewater, Inc., a utility under the jurisdiction of the Pennsylvania Public Utility Commission.

3. The Complainant resides and receives wastewater service at 502 Raspberry Lane, West Chester, Pennsylvania 19382 (Service Address). Tr. 5.

4. The Service Address receives residential service and is located in Rate Zone 8 – East Bradford Township Division under Aqua’s Tariff Sewer-Pa P.U.C. No. 3 (Tariff Sewer No. 3).

5. Pursuant to Tariff Sewer No. 3, Aqua bills the Complainant a Monthly Service Charge of \$57.61 and a Monthly Consumption Charge of \$11.737 per 1,000 gallons of water used. Tariff Sewer-Pa P.U.C. No. 3, p. 10.8.

6. Tariff Sewer No. 3 does not include a provision for the installation of wastewater meters. Tariff Sewer-Pa P.U.C. No. 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 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). 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). 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). 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 decision of the Commission must be supported by substantial evidence. 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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 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 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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlt. 2001); *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlt. 1982).

Finally, a 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; *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlt. 1981). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlt. 1996).

In this matter, Aqua is billing Mr. Persons a Monthly Service Charge of \$57.61 and a Monthly Consumption Charge of \$11.737 per 1,000 gallons of water used pursuant to its Commission-approved Tariff Sewer No. 3. Mr. Persons filed the Complaint because he objects to his wastewater bills being based on his water usage along with a flat rate. Mr. Persons would like a wastewater meter installed so that he is only charged for wastewater that enters the wastewater system. Essentially, Mr. Persons disagrees with Aqua's current wastewater tariff. However, Mr. Persons did not present any evidence that the facts and circumstances leading to the creation of Aqua's Commission-approved tariff have changed so drastically as to render the application of the tariff provision unreasonable other than his own statement that he disagrees with it. Tr. 5-6.

The Complainant's opinion alone is insufficient to overcome the *prima facie* reasonableness of the Commission-approved tariff. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006). Thus, I find the Complainant failed to satisfy his burden of proving that Aqua violated its tariff, the Public Utility Code, or a Commission Regulation or Order. Accordingly, the Complaint will be denied.

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; *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).
4. The Complainant has failed to satisfy his burden of proving that Aqua violated its tariff, the Public Utility Code, or a Commission Regulation or Order. 66 Pa.C.S. § 701.
5. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit a complainant to sustain his burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Edgar N. Persons III at Edgar N. Persons III v. Aqua Pennsylvania Wastewater, Inc., Docket No. C-2022-3036138, is denied.
2. That Docket No. C-2022-3036138 be marked closed.

Date: June 26, 2023

/s/
F. Joseph Brady
Administrative Law Judge