

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Wikol	:	
	:	
v.	:	C-2022-3036760
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Formal Complaint of Michael Wikol 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 November 14, 2022, Michael Wikol (Mr. Wikol 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. Wikol argued that Aqua’s rate increase approved by the Commission is excessive. Mr. Wikol requested that the rates be decreased.

On December 5, 2022, Aqua filed an Answer to the Complaint. 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 on May 16, 2022, the Commission issued an order approving Aqua's request to increase its wastewater rates with the Company's new rates becoming effective on May 19, 2022 (Docket Nos. R-2021-3027385 and R-2021-3027386). Aqua requested that the Complaint be dismissed.

By Hearing Notice dated December 8, 2022, an Initial Call-In Telephonic Hearing was scheduled for March 15, 2023, and the matter was assigned to me.

A Prehearing Order was issued on March 2, 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 15, 2023, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Complainant did not present any evidence at the hearing. 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 Michael Wikol.
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 from Aqua at 438 Buttonwood Road, Landenberg, Pennsylvania 19350 (Service Address). Tr. 5.
4. The Service Address receives residential service and is located in Rate Zone 11 under Aqua's Tariff Sewer-Pa P.U.C. No. 3 (Tariff Sewer 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. Cmwlth. 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. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 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. Cmwlth. 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. Cmwlth. 1996).

In this matter, Aqua is billing Mr. Wikol pursuant to its Commission-approved Tariff Sewer No. 3. Mr. Wikol filed the Complaint because he objects to the rates in Aqua's Commission-approved Tariff Sewer No. 3. However, Mr. Wikol did not present any evidence at the hearing in support of his Complaint other than his own statement that he disagrees with the wastewater rates he is being charged. 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;

*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).

4. 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).

5. 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Michael Wikol at Michael Wikol v. Aqua Pennsylvania Wastewater, Inc., Docket No. C-2022-3036760, is denied.

2. That Docket No. C-2022-3036760 be marked closed.

Date: June 26, 2023

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/s/  
F. Joseph Brady  
Administrative Law Judge