

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jacqui Fray	:	
	:	
v.	:	C-2022-3036686
	:	
Aqua PA Wastewater, Inc.	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses the Formal Complaint filed by Jacqui Fray against Aqua PA Wastewater, Inc. Ms. Fray failed to satisfy her 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 her at her home.

**HISTORY OF THE PROCEEDING**

On October 31, 2022, Jacqui Fray (“Complainant” or “Ms. Fray”) filed a Formal Complaint<sup>1</sup> with the Pennsylvania Public Utility Commission (“Commission”) against Aqua PA Wastewater, Inc. (“Aqua” or “Respondent”). In the Formal Complaint, Ms. Fray alleged, *inter alia*, that her base user charge is not acceptable or in line with her actual minimal usage at her home located at 338 Mulberry Drive, Limerick, PA 19468 (“Service

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<sup>1</sup> The Formal Complaint is a timely appeal from a determination of the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3864649.

Address”). As relief, Ms. Fray indicated that Aqua should reduce the base user charge to reflect the number of household residents and their current income.

On November 29, 2022, Aqua timely filed an Answer in which it acknowledged that it provides wastewater service to the Complainant and averred that she is billed for service at a rate established pursuant to a Commission-approved tariff (the “WW Tariff”). Further, Aqua averred, *inter alia*, that the Complainant’s bill increased in an amount approved by the Commission under the WW Tariff. Finally, Aqua averred that the WW Tariff has the force and effect of law and, having been approved by the Commission are *prima facie* reasonable.

On December 8, 2022, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was electronically served on both parties scheduling a call-in telephonic evidentiary hearing on March 8, 2023, at 10:00 a.m., and assigning me as the presiding officer.

The hearing was held as scheduled on March 8, 2023. Margret Morris, Esquire attended on behalf of Aqua, along with a witness for Aqua. Ms. Fray appeared for the hearing, *pro se*. Aqua submitted five exhibits that were entered into the record. Ms. Fray did not submit any exhibits.

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

#### FINDINGS OF FACT

1. The Complainant is Jacqui Fray.
2. The Respondent is Aqua PA Wastewater, Inc.
3. The Complainant receives wastewater service from Aqua at her home located at 338 Mulberry Drive, Limerick, PA 19468.
4. On May 16, 2022, the Commission approved the WW Tariff.

5. The WW Tariff included an increase in Aqua wastewater service rates effective May 19, 2022.

6. The Complainant's service address is located within Rate Zone 7, an area covered by the WW Tariff.

7. Aqua billed the Complainant for wastewater service consistent with the WW Tariff.

### 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, Ms. Fray has alleged that Aqua violated the Public Utility Code, or a rule, regulation or order issued by the Commission. 66 Pa.C.S. § 1501. Therefore, Ms. Fray has 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.

In her testimony, Ms. Fray stated that since she began receiving wastewater service from Aqua, her bill had increased 66%. Tr. 11. However, she provided little other testimony in support of the claims made in the Formal Complaint. In fact, she indicated that she did not understand how the Formal Complaint had been understood as a request for an adjustment to her wastewater bill. Tr. 11. In addition, she indicated that billing for wastewater service should be based on usage and did not recall stating in the Formal Complaint that wastewater rates should be based on household income, the remedy she had specified in the Formal Complaint. Tr 18.

At no point in this proceeding did Ms. Fray identify any provision of the Code, or any Commission regulation, or order violated by Aqua, nor did she argue that her wastewater bill was miscalculated, or that the service provided to her by Aqua was unsatisfactory or defective.<sup>2</sup> Instead, in her testimony, the Complainant candidly professed that matters such as tariffs, the

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<sup>2</sup> A significant portion of her testimony related to the sale of wastewater assets by Limerick Township to Aqua, her belief that it was not "a fair ethical business practice." Tr. 11, 18 – 19, 11 – 12. Aqua's counsel objected to Ms. Fray's testimony regarding the sale of assets to Aqua, whether or not there was a public hearing before the WW Tariff was approved and lack of communication concerning those matters. Aqua's objection was sustained. Tr. 12 – 14.

transfer or sale of wastewater assets and services to Aqua and Commission approval, were beyond her comprehension. Tr. 11.

Aqua presented the testimony of Christopher Manning, a Finance and Rates Analyst. Mr. Manning provided credible testimony that Ms. Fray had been billed for service in accordance with the Commission-approved WW Tariff. Tr. 34 - 35. He also provided credible testimony that under the WW Tariff, the Respondent was prohibited from billing her at any rate other than the rate specified therein. Tr. 35.

By law, a public utility is entitled to receive payment for the service it provides. *Mill v. Pa. Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 637 (1982). See also *Kea v. Peoples Natural Gas Co.*, 60 Pa.P.U.C. 215 (1985). A utility has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303. *Neal v. Phila. Gas Works*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990). All customers are obligated to pay for utility service. To the extent that Ms. Fray challenges Aqua's Commission-approved, tariffed rates for service, she 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. The Complainant has not demonstrated by a preponderance of the evidence that Aqua violated any provision of the Code or the regulations of the Commission. Similarly, Ms. Fray did not demonstrate by a preponderance of the evidence that Aqua's tariff rates are unjust, unreasonable or in violation of a Commission regulation or order or that Aqua did not bill her for service according to its Commission-approved tariff. Consequently, it is appropriate to dismiss Ms. Fray's Formal Complaint.

#### 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. 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).

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. 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*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "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).

9. 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. Cmwlt. 1995); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlt. 1981); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlt. 1977).

10. Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlt. 1991); 66 Pa.C.S. § 316.

11. The Complainant has 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 Jacqui Fray in *Jacqui Fray v. Aqua PA Wastewater, Inc.* at Docket No. C-2022-3036686 is dismissed.

2. That the docket at Docket No. C-2022-3036686 be marked closed.

Date: June 27, 2023

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/s/  
Arlene Ashton  
Administrative Law Judge