

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald H. Schad	:	C-2022-3036934
	:	C-2022-3036935
v.	:	
	:	
The Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the consolidated Formal Complaints filed by Ronald H. Schad against Pittsburgh Water and Sewer Authority (PWSA) due to Complainant's failure to meet his burden of proof that PWSA violated a statute, regulation, order, or tariff provision.

HISTORY OF THE PROCEEDING

On November 28, 2022, Ronald H. Schad (Complainant) filed a Formal Complaint with the Public Utility Commission (Commission) against PWSA that was assigned two docket numbers, C-2022-3036934 and C-2022-3036935. Mr. Schad avers that he should not be charged a wastewater conveyance charge by PWSA for the water usage that passes through his bypass meter because PWSA is not transporting this water through its sewer lines. He also disputes the impervious surface square footage total used by PWSA to calculate the correct stormwater management service rate under PWSA's tariff for his property. Mr. Schad requests credit for the volume of water recorded on his bypass meter on his PWSA wastewater conveyance bill.

PWSA filed an answer at each docket on December 19, 2022.

On December 20, 2022, PWSA filed a Motion to Consolidate both docketed complaints. Complainant did not file an objection to the consolidation and the Motion was granted by First Interim Order Granting Motion to Consolidate on February 23, 2023.

An Initial Call-In Telephone Hearing Notice was served on February 24, 2023, scheduling a telephone hearing for April 6, 2023. On February 24, 2023, a Prehearing Order for Telephone Hearing was served.

The evidentiary hearing convened as scheduled on April 6, 2023. Mr. Schad represented himself at the hearing and testified on his own behalf. He did not offer any exhibits. Bryce R. Beard, Esquire, represented PWSA. PWSA presented the testimony of two witnesses, Julie Mechling and Tony Igwe. PWSA offered PWSA Exhibit Nos. 1, 2A, 2B, 3A, 3B, 4, 5, 6, 7, 8 and 9. These exhibits were admitted into the hearing record. The record consists of the transcript of the hearing on April 6, 2023 and PWSA's exhibits.

An Interim Order Closing the Hearing Record was issued on April 28, 2023. The matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainant is Ronald H. Schad and he resides at 2509 Greenboro Lane, Pittsburgh, Pennsylvania 15220 (residence). Tr. 9.

2. Respondent PWSA is a municipal authority regulated by the Commission since April 1, 2018. Tr. 15-16.

3. PWSA provides wastewater conveyance service and stormwater management service to Complainant at his residence but does not provide water service. PWSA also includes on Complainant's bills the wastewater treatment charges assessed to his residence by the Allegheny County Sanitation Authority (ALCOSAN). Tr. 16-18.

4. Pennsylvania-American Water Company (PAWC) provides water service to Complainant's residence. Tr. 18, 27.

5. ALCOSAN and PWSA are separate entities. Tr. 16.

6. PAWC bills its water service customers for water service in increments of 100 gallons and Respondent PWSA bills its water service customers for water service in increments of 1,000 gallons. Tr. 27.

7. PWSA does not charge for wastewater conveyance service until the customer actually uses 1,000 gallons. Tr. 27; PWSA Ex. 4.

8. PWSA's wastewater conveyance charges are based on water meter readings and Mr. Schad's water meter size. Tr. 27; PWSA Ex. 4.

9. PWSA receives Mr. Schad's water meter readings for the billing period from PAWC and converts those readings to calculate the wastewater conveyance bill. Tr. 27; PWSA Ex. 4.

10. Mr. Schad has underground water sprinklers in his lawn and a credit meter from ALCOSAN measures this usage. ALCOSAN water treatment service bills are credited quarterly based on the measured usage on the credit meter. Tr. 11, 26

11. PWSA's Commission-approved tariff does not permit a credit to the wastewater conveyance charges for lawn sprinkler usage or any usage measured by an ALCOSAN credit meter. Tr. 27; PWSA Ex. 4.

12. On April 14, 2022, Mr. Schad sent PWSA a letter advising that he had an underground lawn sprinkler system and that he might be interested in a credit program for lawn watering usage. Tr. 30; PWSA Ex. 2A.

13. On May 13, 2022, PWSA sent Mr. Schad a letter responding to his April 14, 2022 letter. PWSA informed Mr. Schad that it did not have a program for crediting underground lawn sprinklers and advised Mr. Schad to contact ALCOSAN about its credit program for water treatment service bills. Tr. 29; PWSA Ex. 3A.

14. On June 15, 2022, Mr. Schad sent PWSA a letter advising that he would expect a credit from PWSA for wastewater conveyance charges based upon his installed ALCOSAN credit meter reading which measured lawn sprinkler usage. Tr. 29-30; PWSA Ex. 2B.

15. Mr. Schad informed PWSA that he would take photos of his ALCOSAN credit meter readings at the start and finish of his outdoor watering season for purposes of calculating the PWSA wastewater conveyance service charge. Tr. 30; PWSA Ex. 2B.

16. On September 27, 2022, PWSA sent a letter to Mr. Schad advising him again that PWSA did not offer a credit to wastewater conveyance charges. Tr. 30; PWSA Ex. 3B.

17. PWSA receives information from ALCOSAN regarding water usage measured by ALCOSAN's credit meter installed at Mr. Schad's residence and includes those credits for ALCOSAN's water treatment services on Mr. Schad's bills. Tr. 31.

18. PWSA assesses residential customers a stormwater management service charge which is calculated based upon the impervious surface area on the property. Tr. 52-54; PWSA Ex. 7.

19. PWSA's tariff defines an impervious surface to be a manmade surface resulting from parcel improvements which prevents or limits the infiltration of water into the ground. The definition includes most conventional hardscaped surfaces such as: driveways, roofs, walkways, patio areas and other similar surfaces. Tr. 62; PWSA Ex. 7.

20. PWSA utilizes GIS mapping software to calculate the total impervious surface area on a parcel. Tr. 53-54; PWSA Ex. 7.

21. For the initial process of mapping impervious areas, PWSA utilized automated image analysis software which was then checked manually by PWSA's stormwater GIS team. Tr. 56.

22. PWSA's stormwater management service rates are calculated based upon equivalent residential units (ERU) determined by PWSA. Tr. 19; PWSA Ex. 7.

23. PWSA uses three tiers of ERUs to determine what stormwater management service rate to charge. The rate charged increases with each tier. Tier 1 is the lowest rate and Tier 3 is the highest rate. Tr. 54; PWSA Ex. 7.

24. Impervious area of 400 square feet to less than 1,015 square feet is 0.5 ERU. Tr. 54; PWSA Ex. 7.

25. Impervious area of 1,015 square feet to less than 2,710 square feet is 1.0 ERU. Tr. 54; PWSA Ex. 7.

26. Impervious area greater than or equal to 2,710 square feet is 2 ERU. Tr. 54; PWSA Ex. 7.

27. The total square footage of impervious surface area at Mr. Schad's property is 3,596 square feet. Tr. 60, 65; PWSA Ex. 3B, 8.

28. Mr. Schad's driveway is 603 square feet. The driveway was included by PWSA in its calculation of the impervious surface area square footage at Mr. Schad's residence. Tr. 65; PWSA Ex. 3B, 8.

29. PWSA charges Mr. Schad the Tier 3 stormwater management service rate, which is the highest rate, because the impervious surface area of his property exceeds 2,710 square feet. Tr. 63; PWSA Ex. 7.

30. Even if the surface area of Mr. Schad's driveway was deducted from the total impervious surface area for the property, the total impervious surface area for the property would be 2,993 square feet. The total impervious surface area would still require that the property be charged the Tier 3 rate. Tr. 63-66; PWSA Ex. 7.

31. PWSA's tariff permits a credit to the stormwater management service charge for residential customers. Tr. 70-72; PWSA Ex. 7.

32. Mr. Schad did not provide PWSA with any information necessary to determine he is entitled to a stormwater management service credit. Tr. 70-72; PWSA Ex. 7 and 9.

DISCUSSION

Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001). Assertions, personal

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

Mr. Schad has the burden of proof in this proceeding. Mr. Schad contends that he should not be charged a wastewater conveyance fee for the water that passes through his bypass meter because PWSA is not transporting this water through its sewer lines. Mr. Schad requests credit for the volume of water recorded on his bypass meter on his PWSA wastewater conveyance bill. He also disputes the impervious surface area square footage total used by PWSA to calculate the stormwater management service rate under PWSA's tariff.

Wastewater Conveyance Service Charge

Public utility tariffs have the force and effect of law and are binding on the customer as well as the utility. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (1995). The law is clear that where a complaint involves existing rates, the burden falls upon the customer to prove that the charge is no longer reasonable. *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189 (1993). In this case, the burden is upon Mr. Schad to prove that the wastewater conveyance service rates approved by the Commission in PWSA's wastewater tariff are no longer just and reasonable.

PWSA's Commission-approved tariff does not address credit to the wastewater conveyance charges for lawn sprinkler usage or any usage measured by an ALCOSAN credit meter or bypass meter. Tr. 27; PWSA Ex. 4. Mr. Schad is not a water service customer of PWSA. PAWC provides water service to Mr. Schad. PWSA uses Mr. Schad's meter size and meter readings provided to it by PAWC to calculate Mr. Schad's bills for residential wastewater conveyance service consistent with its tariff. This method for calculating bills is easily implemented because it is dependent simply on the water meter size and usage measured through the water meter as provided to PWSA from PAWC. See PWSA Ex. 4. The wastewater measured by the ALCOSAN meter is not part of PWSA's wastewater billing calculation. Mr. Schad has not met his burden of proving that PWSA's wastewater tariff provisions regarding wastewater conveyance service are no longer just and reasonable simply because they do not permit credit for water usage passing through a bypass meter onto his lawn.

Stormwater Management Service Rate

Mr. Schad disputed PWSA's square footage calculation for the purpose of assessing his stormwater management service rate.

PWSA offered the credible testimony of Tony Igwe regarding the manner in which PWSA calculated the impervious surface area square footage for Mr. Schad's property. PWSA utilizes GIS mapping software to calculate the total impervious surface area on a parcel. Tr. 53-54; PWSA Ex. 7.

PWSA's stormwater management service rates are calculated based upon ERU determined by PWSA. Tr. 19; PWSA Ex. 7. PWSA uses three tiers of ERUs to determine what stormwater management service rate to charge. The rate charged increases with each tier. Tier 1 is the lowest rate and Tier 3 is the highest rate. Tr. 54; PWSA Ex. 7. Impervious area greater than or equal to 2,710 square feet is 2 ERU. Tr. 54; PWSA Ex. 7.

The total square footage of impervious surface area at Mr. Schad's property is 3,596 square feet. Tr. 60, 65; PWSA Ex. 3B, 8. PWSA charges Mr. Schad the Tier 3 stormwater management service rate, which is the highest rate, because the impervious surface area of his property exceeds 2,710 square feet. Tr. 63; PWSA Ex. 7. Mr. Schad's driveway is 603 square feet. The driveway was included by PWSA in its calculation of the impervious surface area square footage at Mr. Schad's residence. Tr. 65; PWSA Ex. 3B, 8. Even if the surface area of Mr. Schad's driveway was deducted from the total impervious surface area for the property, the total impervious surface area for the property would be 2,993 square feet. The total impervious surface area would still require that the property be charged the Tier 3 rate. Tr. 63-66; PWSA Ex. 7.

Mr. Schad did not offer any credible testimony that the calculations of impervious surface area square footage on his property were inaccurate. He questioned whether his driveway should have been included in the calculation, but he did not provide evidence that it is not an impervious surface. Even if he did, the total square footage calculation for his property would still require a charge pursuant to Tier 3.

In addition, aside from questioning the inclusion of his driveway, Mr. Schad did not provide PWSA with any information necessary to determine he is entitled to a stormwater management service credit. Tr. 70-72; PWSA Ex. 7 and 9.

Accordingly, Mr. Schad's Complaints are dismissed because he failed to prove PWSA's wastewater conveyance tariff provisions are no longer just and reasonable, and he failed to establish that PWSA incorrectly calculated the impervious surface area on his property.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. § 701.

2. The proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

3. "A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

4. To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701.

5. Where a complaint involves existing rates, the burden falls upon the customer to prove that the charge is no longer reasonable. *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189 (1993).

6. Complainant failed to carry his burden of proof establishing that The Pittsburgh Water and Sewer Authority violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 332(a).

7. Complainant failed to carry his burden of proof establishing that The Pittsburgh Water Authority's Commission-approved Wastewater Tariff provisions regarding wastewater conveyance are no longer just and reasonable. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaints of Ronald H. Schad in Ronald H. Schad v. The Pittsburgh Water and Sewer Authority at Docket Nos. C-2022-3036934 and C-2022-3036935 are dismissed.

2. That Docket Nos. C-2022-3036934 and C-2022-3036935 be marked as closed.

Date: July 25, 2023

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge