

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Stochel & Tamara Stochel	:	
	:	
v.	:	C-2023-3038406
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of wastewater customers who alleged that the company’s wastewater charges are unfair because they are based on water meter readings that included water used outside in the warmer months which did not enter the wastewater system. The Formal Complaint is denied because the Complainants failed to carry their burden of proof that the company violated the Public Utility Code, a Commission Regulation or Order, its Commission-approved tariff, or that the tariff as applied to them is unreasonable.

HISTORY OF THE PROCEEDING

On February 14, 2023, Robert Stochel and Tamara Stochel (“Complainants”) filed a Formal Complaint¹ (“Complaint”) with the Pennsylvania Public Utility Commission

¹ Complainants filed an informal complaint with the Commission’s Bureau of Consumer Services (“BCS”) on September 15, 2022, which was docketed at No. 3855570. (Tr. 26; Aqua Wastewater Exhibit 2). BCS dismissed the informal complaint on September 15, 2022. (Tr. 26; Aqua Wastewater Exhibit 2)

(“Commission”) against Aqua Pennsylvania Wastewater, Inc. (“Respondent,” “Company” or “Aqua Wastewater”). The Complainants claimed that the Company’s wastewater charges were improper because the wastewater charges were solely based on water meter readings utilized by the household, including water used in the warmer months for outdoor activities such as operating the sprinkler system to water the lawn/plants, washing cars and power washing the house. (Complaint ¶ 4). The Complaint further argued that the Company should not be allowed to charge for wastewater/sewer services not used since this “extra” water went into the ground as opposed to the sewer. (Complaint ¶¶ 4, 5). As relief, the Complainants seek an order from the Commission directing Respondent to bill water and sewer use separately; or alternatively, implement a wastewater billing algorithm for the warmer months by averaging wastewater use of the six colder months and charging that same amount over the full year. (Complaint ¶¶ 4, 5).

On March 14, 2023, Respondent filed a timely Answer in which it denied the material allegations of the Complaint. Specifically, Respondent denied, *inter alia*, that the Complainants had been incorrectly billed and asserted that the Company’s wastewater billing was in compliance with Respondent’s Commission-approved wastewater tariff, which permits the Company to calculate the wastewater bill based on water usage. (Answer ¶ 4). Respondent also asserted that wastewater rates for its customers, including Complainants, was increased effective May 19, 2022 in accordance with the Commission’s order at Docket Nos. R-2021-3027385 and R-2021-3027386 and Complainants have been billed accordingly. (Answer ¶ 4).

On March 20, 2023, the Commission issued a Telephonic Hearing Notice (“Hearing Notice”) assigning this case to the me as the presiding officer and scheduling a telephonic hearing on April 26, 2023. On March 21, 2023, I issued a Prehearing Order addressing various procedures that would govern the hearing.

On April 26, 2023, the hearing was held as scheduled. The Complainants appeared and represented themselves. Robert Stochel testified in support of the Complaint and sponsored five exhibits which were admitted into the record without objection.² The Complainants’ exhibits were: (1) an email between the parties addressing the rate increase, (2)

² Tamara Stochel attended the hearing, but she chose not to offer any testimony.

the definition for wastewater from the Public Utility Code, (3) Complainants' bill dated March 28, 2022, (4) Complainants' bill dated July 28, 2022 and (5) Complainants' billing history.

Respondent was represented by Attorney Mary McFall Hopper, who presented one witness who sponsored two exhibits that were admitted into the record without objection. Respondent's exhibits were (1) Respondent's tariff issued August 15, 2022 and (2) the September 15, 2022 decision from the Commission's Bureau of Consumer Services dismissing the Complainants' informal complaint.

The record closed on May 16, 2023, when the 41-page hearing transcript was received.

For the reasons set forth below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainants are Robert Stochel and Tamara Stochel, residential wastewater customers.
2. The Respondent is Aqua Pennsylvania Wastewater, Inc.
3. The Complainants reside at 746 Turnberry Lane, Hazelton, Hazel Township, Luzerne County, Pennsylvania 18202 ("service address"). (Tr. 9).
4. The service address is located in the Eagle Rock Division – Rate Zone 1 for wastewater. (Tr. 20; Aqua Wastewater Exhibit 1).
5. Aqua Wastewater provides residential water and wastewater service to the Complainants. (Tr. 20).

6. Aqua Wastewater has been providing wastewater and water service to Complainants since September 13, 2017. (Tr. 20).
7. The Complainants' water usage from February 2022 to March 2022 was 2,100 gallons. (Complainants' Exhibit 3).
8. The Complainants' water usage from June 2022 to July 2022 was 7,900 gallons. (Complainants' Exhibit 4).
9. The six highest calendar months of water usage for Complainants were from April through September. (Complainants' Exhibit 3).
10. Christopher Manning is a financial and risk analyst for Aqua Wastewater and his duties include preparing water and wastewater compliance filings for the Commission and preparation of base rate case applications. (Tr. 18).
11. Respondent calculated Complainants' bill for wastewater based on their metered water consumption. (Tr. 24).
12. Respondent's tariff provides that wastewater billing for the service address is based on the metered water consumption. (Tr. 24; Aqua Wastewater Exhibit 1).
13. The Commission approved a rate increase for Respondent's wastewater services at the service address effective May 19, 2022 at *Pennsylvania Public Utility Commission v. Aqua Pennsylvania Wastewater, Inc.*, Docket No. R-2021-3027386 (Opinion and Order entered May 16, 2022). (Tr. 21; Aqua Wastewater Exhibit 1).
14. Aqua Wastewater's Exhibit 1 is a portion of the current wastewater tariff governing billing for the service address and other areas. (Tr. 22-23; Aqua Wastewater Exhibit 1).

15. Effective May 19, 2022, Respondent's tariff changed the billing rate for the service address to a basic service charge of \$48.20 plus \$0.011817 for every thousand gallons of water used. (Tr. 22; Aqua Wastewater Exhibit 1).

16. Prior to the May 19, 2022 rate change, Complainants were billed for wastewater use at a service charge of \$46.96 plus \$0.0076 for every thousand gallons of water used. (Complainants' Exhibit 3).

17. Respondent billed Complainants in accordance with the current Commission approved tariff. (Tr. 24; Aqua Wastewater Exhibit 1; Complainants' Exhibit 4).

18. Respondent's tariff governing the service address does not provide for metering wastewater usage. (Tr. 24).

19. Respondent does not meter wastewater for the service address. (Tr. 24).

20. Respondent's tariff governing the service address does not provide for an adjustment of wastewater billing based on water that does not enter the wastewater treatment plant. (Tr. 24-25).

21. Respondent's tariff provides for a flat wastewater billing rate for customers that are not metered for water usage. (Aqua Wastewater Exhibit 1).

22. Complainants' service address is metered for water usage. (Complainants' Exhibits 3 & 4).

DISCUSSION

Legal Standards

As a matter of law, to establish a legally sufficient claim, 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). The offense must also be a violation of the Public Utility Code, a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

Section 332(a) of the Public Utility Code (Code) provides that a Complainant, as the party seeking affirmative relief from the Commission, has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). To establish a legally sufficient case and satisfy the burden of proof, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 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); *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 with some

additional 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); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

In addition, 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) (*Kossmann*); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Public utility rates are required to be just and reasonable, and where a customer is heard to complain concerning a proposed change in rate, the burden of proof is upon the public utility to show that the proposed rate is just and reasonable. 66 Pa.C.S. § 1301.

However, “[w]here the complaint involves an existing rate . . . the burden then falls upon the customer to prove that the charge is no longer reasonable” or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981) (*Brockway*). The burden of showing that a tariff is unreasonable is “very heavy because tariff provisions submitted to and approved by the Commission are *prima facie* reasonable.” *Kossmann*, 379 A.2d at 1151.

Parties' positions

Complainants do not dispute that Aqua Wastewater charged them according to the Commission-approved tariff. (Tr. at 9). Rather, the Complainants aver that the Company's wastewater charges are unfair as applied to them because the wastewater charges do not consider additional outdoor water usage during the warmer months of the year. (Tr. 9-10). Complainants contend that it is unfair to base their wastewater charges on all water used because this includes water used for watering the grass, washing cars and watering plants that does not go into the sewer or wastewater system. (Tr. 9-10). Complainants position is that this seasonal outside water use is the only thing that differentiates the lower wastewater bills in the colder months from the higher wastewater bills in the warmer months. (Tr. 10, Complainants' Exhibits 3 & 4).

On the other hand, Aqua Wastewater presented testimony from Christopher Manning, a financial and risk analyst for Aqua Wastewater as well as documentary evidence to support its argument that it properly billed Complainants for wastewater service based on meter readings and in full compliance with the Commission-approved wastewater tariff. (Tr. 24; Aqua Wastewater Exhibit 1). Furthermore, Mr. Manning provided testimony that billing for wastewater based on water consumption is a common industry standard that has been approved by the Commission. (Tr. 24). Mr. Manning also averred that Aqua Wastewater cannot charge the Complainants differently than the other wastewater customers because they are required to bill in accordance with the approved tariff and that metered billing for wastewater is preferred over flat rate wastewater billing. (Tr. 25-26).

Analysis

Since the Complainants object to an existing rate, they have a heavy burden to prove by a preponderance of the evidence that the charge is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway; Kossman*. I find that the Complainants have not met this burden. I agree with Respondent that the Commission has consistently determined that utilizing water usage to determine wastewater charges is appropriate and reasonable, notwithstanding that some customers will use a lot more water outside in the warmer months.

For example, this was precisely the issue raised by another customer who filled her swimming pool every year with water from the tap. *Seamon v. Pa.-Am. Water Co.*, Docket No. C-2018-3004588 (Final Order entered May 29, 2019) (“*Seamon*”). Like the Complainants’ position herein, Ms. Seamon argued that it would be unfair to be billed for wastewater usage for the 7,800 gallons of water she estimated she used to fill her pool each summer when this water was not placed into the wastewater system. *Id.* The Commission dismissed Ms. Seamon’s complaint for the failure to meet her burden of demonstrating her wastewater billing was unreasonable. *Id.*

The Commission has also addressed a similar claim in *Genova v. Pennsylvania-American Water Co.*, Docket No. C-2022-3035314 (Final Order entered Feb. 21, 2023) (“*Genova*”). In *Genova*, the Complainant argued that he was charged unfairly for wastewater in the warmer months of the year based on a much larger amount of water used to water his lawn during those months when that water was not disposed of into the sewer. *Id.* The Commission dismissed Mr. Genova’s complaint for failure to meet his burden of demonstrating his wastewater billing was unreasonable. *Id.*

As pointed out by Respondent, residential wastewater flows are not metered on an individual basis in Complainants’ service area. The Commission recognizes that no customer’s wastewater usage will exactly match their water usage; however, a customer’s water usage provides a reasonable measure for that customer’s wastewater usage. *Seamon; Genova*. This means that the Respondent’s wastewater usage charge has been set at a rate which the Commission has determined is fair and reasonable and recognizes that not all water which passes through a customer’s meter is water that will be discharged into the Respondent’s wastewater system. *Seamon; Genova*. Thus, Respondent’s action of billing in accordance with the approved tariff is proper and not a violation of the Public Utility Code, a Commission regulation, or a Commission order.

Accordingly, I find that Complainants have not met their burden of proof and their Complaint must be dismissed.

CONCLUSIONS OF LAW

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

2. To prevail, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint and the offense must be a violation of the Public Utility Code, a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

3. The Complainants, as the party seeking affirmative relief from the Commission, have the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332.

4. A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. 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).

6. Where the Complaint involves an existing rate, the burden of proof falls upon the customer to prove that the charge is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

7. Complainants failed to satisfy their burden of proof that Respondent has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

8. Complainants failed to satisfy their burden of proof that Respondent's Commission-approved tariff rates are no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

