

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 19, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Annuradha Goel

C-2022-3035690

v.

Aqua Pennsylvania Wastewater, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Dennis J. Buckley, issued on July 25, 2023, in the above-captioned proceeding. No Exceptions have been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall reverse the Initial Decision and remand the matter to the Office of Administrative Law Judge (OALJ), consistent with this Opinion and Order.

History of the Proceeding

On September 28, 2022, Annuradha Goel (Complainant or Ms. Goel) filed a Formal Complaint (Complaint) with the Commission against Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) challenging the reasonableness of the charges on her bill. Complaint at 4. In her complaint, Ms. Goel alleged that “Aqua has increased the rate of [her] water bill by 77%” and that her bill presents the following issues: (1) the amount is based on water usage metered by Chester Water Authority (CWA) not actual meter readings of her wastewater usage; (2) the rate is not affordable as it is the second rate increase since New Garden Township sold the sewer system to Aqua; and (3) the rate is 424% more than other surrounding townships. Complaint at 4.

On October 18, 2022, Aqua filed an Answer admitting that Ms. Goel’s rates recently increased and became effective on May 19, 2022, in accordance with the Commission’s May 16, 2022 Order approving Aqua’s request to increase its wastewater rates. See, Pa PUC et al v. Aqua Pennsylvania, Inc. at Docket Nos. R-2021-3027385, R-2021-3027386, (Order entered May 16, 2022). Aqua averred that, at all relevant times, it has provided reasonable and adequate service in compliance with its Commission-approved tariff, the Public Utility Code (Code) and the Commission’s Regulations and Orders.

On November 3, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice (Hearing Notice) setting a formal call-in telephonic hearing for this matter to be held on January 11, 2023. The Hearing Notice, *inter alia*, named the ALJ as the assigned presiding officer, provided a toll-free call-in number to the Parties as well as instructions on how to request a continuance and included language concerning the effects on the case if a party failed to appear.

On December 1, 2022, the Complainant filed a letter requesting a continuance or change of hearing to January 10th, 20th or 24th due to her work schedule.

On December 6, 2022, the Commission issued a Rescheduled Initial Telephonic Hearing Notice rescheduling the hearing until March 14, 2023.

On March 14, 2023, the hearing convened as scheduled. I.D. at 2. Margaret A. Morris, Esquire, appeared on behalf of Aqua, and introduced five exhibits that were admitted into the record: Ms. Goel was present and represented herself. The Complainant offered testimony.

The record closed on April 27, 2023.

On July 25, 2023, the Commission issued the Initial Decision of ALJ Buckley, in which he noted that the Complainant had verbally petitioned to withdraw her Complaint and that Aqua did not object to the petition. Consequently, he granted Ms. Goel's verbal petition to withdraw her Complaint. I.D. at 1-2 and 4.

Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that

presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

ALJ's Initial Decision

ALJ Buckley made six (6) Findings of Fact and reached five (5) Conclusions of Law. I.D. at 2-3, 3-4. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law except as reversed or modified by this Opinion and Order, either expressly or by necessary implication.

The ALJ stated that the Commission's Regulations allow withdrawal of the pleadings and that such a petition is granted only by permission of the presiding officer or the Commission. *See*, 52 Pa. Code § 5.94(a). The ALJ granted a verbal request to withdraw the complaint in the Initial Decision.

Disposition

As a preliminary matter, any argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). On exercise of our independent review of the record, in this matter, the applicable law and the Initial Decision, we will reverse the ALJ's Initial Decision and

remand this matter to the Office of Administrative Law Judge for such further proceedings as deemed necessary, consistent with this Opinion and Order.

At the hearing, following the ALJ's explanation of the ratemaking process and Ms. Goel's response to his questions about the scope of her Complaint, the ALJ gave Ms. Goel two options – either withdraw the Complaint or he would write a decision explaining that there is no justiciable issue in her case. Tr. at 32-34. In accordance with the hearing transcript, it appears that Ms. Goel replied that she wanted the second option, for the ALJ to draft a decision about the justiciability of her Complaint. *Id.* at 34.

Upon review of the record, we find that the hearing transcript does not support a finding of fact that Ms. Goel made a verbal request to withdraw her Complaint. Rather the hearing transcript appears to indicate that Ms. Goel's request is for the ALJ to issue a decision regarding the justiciability of her Complaint.

Moreover, the Commission takes this opportunity to highlight its jurisdiction over the subject matter of this proceeding under Sections 316, 701, 1301, and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 316, 701, 1301, 1501. *See, Kossman v. Pa. PUC*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stitler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). In such cases, especially those involving pro se complainants, the presiding ALJ should provide an explanation of the applicable burden of proof, *see*, 66 Pa. C.S. § 332(a), and provide pro se complainants an opportunity to present their case in accordance with the applicable law. *See, Manu v. Bell Tel. Co. of Pa.*, Docket No. F-09029141 (Opinion and Order entered May 9, 1994) (The Commission accords pro se litigants a certain degree of latitude in proceedings). For these reasons, Ms. Goel should be afforded an opportunity to present her case and provided a decision on the merits based on the evidence. Accordingly, the ALJ's Initial Decision will be reversed, and the matter is remanded to the Office of Administrative

Law Judge for such further proceedings, as deemed necessary, consistent with this Opinion and Order.

Conclusion

Based on the foregoing, we shall reverse the Initial Decision of ALJ Dennis J. Buckley and remand the matter to the OALJ for such further proceedings, as deemed necessary, consistent with this Opinion and Order. **THEREFORE,**

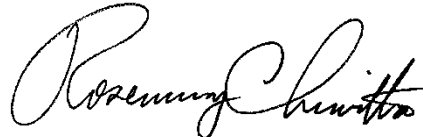
IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Dennis J. Buckley, issued on July 25, 2023, is reversed, consistent with this Opinion and Order.

2. That the proceeding shall be remanded to the Office of Administrative Law Judge for further proceedings, as warranted, and for the issuance of an Initial Decision on Remand, consistent with this Opinion and Order.

3. That the proceeding be set for hearing as soon as practicable consistent with this Opinion and Order.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 19, 2023

ORDER ENTERED: November 8, 2023