

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Hillman	:	
	:	
v.	:	C-2023-3038201
	:	
Aqua Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision finds that there is not substantial evidence to support finding that there was continuing foreign load or that Aqua Pennsylvania, Inc. provided unreasonable or discriminatory service to the Complainant. The Complaint is denied and dismissed.

RELEVANT HISTORY OF THE PROCEEDING

On February 2, 2023, Complainant Mr. Michael Hillman filed a Formal Complaint (Complaint) with the Public Utility Commission (Commission) against Aqua Pennsylvania, Inc. (Aqua). Mr. Hillman is disputing billed charges and arguing that there was foreign load at the service address. He checked boxes on the Complaint form that indicated that the subject of the Complaint was water and steam heat. Hand-written on the Complaint form, Mr. Hillman stated that “PECO shut-off electric and gas service on May 5, 2021, for non-payment. Though our heater was off, we were warming ourselves with the gas stove. So, the [h]ot water heater and stove [were] coming from another gas meter.” He further stated that on December 9, 2022, he contacted Aqua to inform the company that he no longer lived at that

address and to discontinue billing him. The Complainant also sought a “federal jury trial hearing to resolve this matter.” Mr. Hillman additionally alleged that there were safety and discriminatory violations that remained since the last high bill dispute.

On March 1, 2023, Aqua filed an Answer and New Matter. In the Answer, Aqua denied the Complainant’s recitation of facts and timeline of events as it relates to the water service provided. Aqua further averred that the foreign load alleged in the Complaint was the subject of the Formal Complaint filed against Aqua at Docket No. F-2020-3019026 that was dismissed with prejudice. In the New Matter, Aqua avers that any dispute regarding the financial responsibilities of the Complainant and the owner/landlord is a matter to be resolved in the Court of Common Pleas and is outside the Commission’s jurisdiction.

On March 23, 2023, Mr. Hillman filed a Response to the New Matter, arguing that the foreign load issue was not timely addressed or corrected and that the 2020 Complaint was “judged in error” as well as that the Commission “lacks jurisdiction to conduct a federal jury trial hearing. But this is the requested relief, sought here.”

By Notice, dated March 30, 2023, an Initial Call-in Telephonic Hearing was scheduled for Tuesday, May 16, 2023, before the undersigned.

On May 1, 2023, the Complainant filed a document labeled “Argument” stating “this case is on-going...the actual facts are beyond the PUC’s jurisdiction.”

On May 8, 2023, the Complainant submitted Proposed Exhibits A and B. Proposed Exhibit A is a copy of the Utility Report, dated May 2, 2019, issued by Aqua addressing the foreign load issue. Proposed Exhibit B is the Utility Report, dated December 27, 2022, issued by PECO Energy Company, the Complainant’s provider of electric and gas services.

The telephonic hearing convened as scheduled on May 16, 2023. The Complainant appeared *pro se* and alleged that he had not received Aqua’s Proposed Hearing

Exhibits. The hearing could not be conducted in an orderly fashion by telephone and the hearing was adjourned, to be reconvened in person. (Tr. 13-15).

During the May 16, 2023, hearing, counsel for Aqua presented an oral Motion to Dismiss the Complaint. On May 31, 2023, an order was issued directing Aqua to file its Motion to Dismiss in writing by June 7, 2023, and that the Complainant file any response no later than June 14, 2023. On June 7, 2023, Aqua filed a Motion for Judgment on the Pleadings. The Complainant did not file a response by the due date.

By Order dated June 16, 2023, the Complainant's request for a jury trial was denied and dismissed, all claims beyond the statute of limitations were dismissed and the parties were advised that they may prepare and present as a preliminary matter at the next hearing an argument regarding the dates of the statute of limitations.

An in-person further hearing set for June 27, 2023 convened as scheduled. Mr. Hillman appeared *pro se* and presented as a witness his wife, Mrs. Marlo Hillman, and offered ten Exhibits, Complainant Exhibits A through J.

Aqua was represented by Attorney Margaret Morris. She appeared with three witnesses and presented three cross examination documents, Respondent Cross Examination Exhibits A, B and C.

All Respondent Cross Examination Exhibits, A-C and Complainant Exhibits G and J were admitted during the hearing. During the hearing, testimony and cross examination were allowed regarding the remaining Complainant Exhibits and their admission into evidence was taken under advisement.

Aqua, without having presented its three witnesses, requested that the hearing be continued due to the late hour. That request was granted and the hearing was adjourned, to be scheduled for further hearing.

On July 11, 2023, Mr. Hillman filed a Response to Aqua's Motion For Judgment On The Pleadings. Therein, Mr. Hillman admitted that he filed a Formal Complaint in 2020 regarding Foreign Load dating back to 2015, contested Aqua's investigation of the foreign load, and stated that on December 9, 2022, he called Aqua to request that the company discontinue billing him. He also contended that there is a continuing violation at issue and that the statute of limitations should be tolled. The Complainant also questioned various aspects of the 2020 decision.

On July 17, 2023, Aqua filed a Reply To Hillman Answer To Motion. The company asserted that the Complainant is seeking to amend the Formal Complaint and expand the scope of the proceedings and that it should not be permitted. Aqua again noted the three years statute of limitations in 66 Pa.C.S. § 3314 and argued that there is no basis upon which to toll the statute of limitations and that assertions regarding the 2020 proceedings are not at issue here.

On July 25, 2023, an order was issued granting in part and denying in part the Motion for Judgment on the Pleadings/Motion to Dismiss of Aqua. The order dismissed any claims pertaining to the foreign load addressed by Administrative Judge Law Pell at Docket No. F-2020-3019026 and any claims that arose more than three years prior to February 2, 2023, the date the instant complaint was filed. The remaining issues would proceed to a decision.

The July 25, 2023 order also stated that any further proceedings would be held in writing and gave Aqua until August 25, 2023 to submit the testimony of its witnesses and the Complainant until September 29, 2023 to provide written rebuttal.

On August 7, 2023, the Complainant requested by motion that he receive documents by certified mail because he was having problems receiving mail through his post office box. Mr. Hillman has not provided a street address to which mail can be sent.

On or about August 9, 2023, the Complainant filed a Right to Know Request seeking to review all documents in this and another pending matter, Michael Hillman v. PECO

Energy Company, Docket Number C-2023-3038204. Attached was a Motion for Sanctions against Aqua.

The Secretary's Bureau of the Commission issued a response to the RTK request within two days of receipt, on August 11, 2023, granting Mr. Hillman's request and advising that the records would be made available to him. The files were made available to Mr. Hillman at the Philadelphia Office of Administrative Law Judge. Mr. Hillman has visited the office on many occasions to review the files and to pick up copies of filings, orders and notices.¹ On August 17, 2023, an order was issued stating that Commission documents would be sent to the Complainant as he requested.

Aqua submitted written testimony on August 25, 2023. Mr. Hillman submitted written testimony on October 20, 2023.² By Further Call-In Telephonic Hearing Notice dated October 10, 2023, a hearing for cross examination was set for November 16, 2023. A Prehearing Order was issued on October 17, 2023.

On November 13, 2023, Aqua requested that the hearing be continued due to the sudden unavailability of its witness. The request was granted and on November 14, 2023, a Cancelled/Rescheduled Initial Telephonic Hearing Notice was issued setting a hearing for January 16, 2024. A Prehearing Order was issued on November 27, 2023.

The hearing convened as scheduled on January 16, 2023. Mr. Hillman represented himself and Mrs. Hillman was also present for cross examination. Aqua was represented by Margaret Morris, Esquire, who presented Harrison Heather, Aqua Paralegal who handles Commission and Executive complaints on behalf of the company.

¹ Mr. Hillman would not provide a street mailing address and did not sign up for eService. He provided a P.O. Box to which all documents were sent in addition to their availability to him at the Philadelphia OALJ offices.

² Mr. Hillman had contacted the Commission and stated that he continued to have problems retrieving his mail from the post office as someone was tampering with his mail. He requested and was given additional time to submit testimony.

The final pages of the 277-page transcript were received on February 8, 2023. Mr. Hillman filed a Motion to Admit Exhibits and a Motion for Rehearing on February 10, 2024. Whether to admit the documents exhibits submitted by Mr. Hillman was taken under advisement but are admitted herein, marked MH-2 through MH-8.

Exhibits in this matter are:

Admitted during the hearing: Complainant Exhibits G and J

Respondent Cross Examination Exhibits A, B and C.

Admitted herein:

Complainant Exhibits A, B, C, D, E, F, H, I and MH-2 to MH-8
Aqua Statement No. 1 and attachments (Heather Harrison)

Complainant Statement No. 1 and attachments (Michael Hillman)

Complainant Statement No. 2 and attachments (Marlo Hillman)

An order was issued on February 15, 2023 that closed the record and denied the Motion for Rehearing.

FINDINGS OF FACT

1. Mr. Michael Hillman is the Complainant.
2. The Respondent is Aqua Pennsylvania, Inc.
3. Mr. Hillman was an Aqua customer from October 28, 2015 until December 9, 2022 at 301 Lincoln Avenue, Apartment 1, Collingdale, Pennsylvania.
4. In February 2020, Mr. Hillman filed a Complaint with the Commission against Aqua at Docket No. F-2020-3019026 alleging foreign load at the service address.

5. In November 2020, Administrative Judge Law Christopher Pell dismissed the Foreign Load Complaint, with prejudice, in *Hillman v Aqua Pennsylvania Inc.* at Docket No. F-2020-3019026.

6. The Commission adopted the Initial Decision of ALJ Pell. *Hillman v Aqua Pa. Inc.*, Docket Number F-2020-3019026 (Final Order entered Jan. 27, 2021).

7. Mr. Hillman called Aqua on December 9, 2022 to inform the company that he had moved and to stop billing him for service at the service address. Tr. 40, 46, 105-106; Aqua Statement 1, Exhibit HH-1; Complainant Statement 1 at 1.

8. During the December 9, 2022 call, Mr. Hillman also raised a High Bill Dispute. Tr. 40, 46, 105-106, Aqua Statement 1, Exhibit HH-1.

9. On December 28, 2022, Mr. Hillman called Aqua to follow-up on his High Bill Dispute.

10. On January 3, 2023, Mr. Hillman filed an Informal Complaint with the Commissions' Bureau of Consumer Services against Aqua alleging a High Bill. Aqua Statement 1, Exhibits HH-1, HH-2.

11. Also on January 3, 2023, Aqua became aware that the Complainant had filed a civil action against the Company. Aqua Statement 1, Exhibits HH-1, HH-2.

12. On January 6, 2023, Aqua provided to BCS the company's report regarding the Complainant's High Bill Dispute and referred the matter to its outside counsel. Aqua Statement No. 1 at 9; Aqua Statement No. 1 Exhibit HH 2.

DISCUSSION

Mr. Hillman contends that there was continuing foreign load at the service address and that Aqua engaged in unsafe practices and discrimination in service. 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). Mr. Hillman must establish his case 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 or she presents evidence more convincing, by even the smallest amount, than that evidence presented by the respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

In addition, 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. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

As a matter of law, to establish a legally sufficient claim and prevail, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). 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 Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

The Code defines “service” as:

[s]ervice, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them[.]

66 Pa.C.S. § 102.

As the Commission has discussed, “Foreign load” is where the utility meter for a dwelling unit is registering usage not exclusive to the dwelling unit or its occupants. *See, I-A Realty v. Pa. Pub. Util. Comm’n*, 63 A.3d 480 (Pa. Cmwlth. 2013). Once a utility confirms that there is foreign load, the account must be placed in the name of the property owner. 66 Pa.C.S. §1529.1.

Foreign Load

The record does not support finding that there was continuing foreign load at the service address, particularly with respect to Aqua. Most of the evidence presented and testimony of Mr. and Mrs. Hillman pertained to events that occurred more than three years prior to the filing of the Complainant, particularly in 2019. Tr. 67, 75, 81, 88, 117, 132, 184, 189.

The Complaint was filed on February 2, 2023. Complainant Exhibits MH-2 through MH-8 reference events in 2019. These claims are not viable here because on July 25, 2023, I issued an Order that dismissed any claims that arose more than three years prior to February 2, 2023, and any claims pertaining to the foreign load addressed and dismissed by Administrative Judge Law Pell at *Hillman v Aqua Pa. Inc.*, Docket No. F-2020-3019026 (Final Order entered Jan. 27, 2021).

The entire Complaint was not dismissed to allow Mr. Hillman an opportunity to establish his claim of ongoing foreign load. Mr. and Mrs. Hillman lived at the service address until December of 2022. Both testified that the foreign load was not corrected and was ongoing at the time that they moved out. Tr. 57, 99, 111.

Although Mr. Hillman presented a 2022 document showing an ongoing dispute with PECO Energy Company regarding foreign load, there was not substantial evidence of foreign load pertaining to Aqua services. Nothing in the record demonstrates or suggests that Mr. Hillman's water meter was registering usage not exclusive to the service address or the Hillmans.

Mr. Hillman testified that in his opinion there was foreign load because the hot water heater and boiler continued to operate after PECO informed him that his gas and electric service were shut off. Complainant Statement 1 at 1; Tr. 66, 67, 102. Mrs. Hillman also testified that they continued to have hot water after the gas and electric services were shut off. Tr. 122. None of this establishes that there was foreign load related to water service provided by Aqua.³

The opinions of Mr. Hillman and Mrs. Hillman that there was foreign load were carefully considered; however, they provided no details or other evidence in support of their opinions, which alone will not support a finding on behalf of the Complainant. "Opinions and

³ Core to Mr. Hillman's opinion that there was continuing foreign load was his understanding that his gas was shut off. In *Hillman v. PECO Energy Co.*, Docket No. C-2023-3038204 (Opinion and Order entered Feb. 22, 2024) it was determined that PECO had not shut off the gas at the service address and had provided Mr. Hillman with inaccurate information, for which the company was fined.

conclusions cannot be relied upon as substantial evidence in a decision by the Commission.” *Norman v Phila. Gas Works*, Docket No. C-2018-2640719 at 30 (Opinion and Order entered Oct. 7, 2021).

Safety

Under the Code, utilities are required to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. § 1501. Mr. and Mrs. Hillman raised concerns regarding Aqua’s compliance with municipal codes. *See* Tr. 115-116, 151, 153. The Commission does not have jurisdiction over such issues. *See Shank v PPL Elec. Utils., Inc.*, Docket No. C-2009-2087300 (Opinion and Order entered Aug. 31, 2009). Even if the Commission did have jurisdiction over compliance with municipal codes, Complainant presented no evidence suggesting or supporting a finding that Aqua provided or allowed unsafe service in violation of 66 Pa.C.S. § 1501.

Reasonable Service in Response to a Dispute

Mr. Hillman also averred that Aqua did not adequately respond to his concerns when he contacted Aqua in 2022. Under 52 Pa. Code. § 56.151, upon the initiation of a dispute, the utility may not terminate service and the utility should investigate the matter using reasonable methods, which may include telephone or personal conferences. 52 Pa. Code. § 56.151(1)-(2). That section also requires the utility to issue a report concerning the dispute within 30 days. 52 Pa. Code. § 56.151(5).

Mr. Hillman called Aqua on December 9, 2022 to advise that he no longer lived at the service address and that he wanted Aqua to stop billing him for service at the service address. Tr. 105-106; Aqua Statement 1, Exhibit HH-1. He spoke with an Aqua representative about possible foreign load and opening a High Bill Dispute during the December 9, 2022 call. He called Aqua again after he moved out of the service address, on December 28, 2022, as a follow up to his High Bill dispute. Complainant Statement No. 1 at 2. He contends that Aqua did not

provide a response or investigate his High Bill Dispute within 30 days and therefore the company provided unreasonable service in violation of Section 1501.

The record supports a finding that the service provided by Aqua, though not peak customer service, was not unreasonable and does not rise to the level of a violation. When Mr. Hillman contacted Aqua in December of 2022, he referenced the 2019 foreign load issue, stating that the company did not prove to him that there was no foreign load in 2019, and he reiterates that as his concern in written testimony submitted here. Aqua Statement 1 at 6; Complainant Statement No. 1 at 1-3. Also, Mr. Hillman had moved out of the service address by the time of his call to the Company in December of 2022 and therefore it was not unreasonable that Aqua did not further reinvestigate a more than three-year-old foreign load claim that Aqua had investigated in December of 2018 and March of 2019. *See* Complainant Exhibit A.

As to the report due in response to the dispute, Aqua did not issue a report concerning the high bill dispute directly to Mr. Hillman within 30 days. As explained by Aqua's witness, the company had until January 8, 2023 to respond to Mr. Hillman's December 9, 2022 High Bill Dispute. However, an intervening event occurred: Mr. Hilman filed an Informal Complaint with the Bureau of Consumer Services on January 3, 2023 and on the same date the company learned that Mr. Hillman had filed a civil lawsuit against Aqua. Tr. 195-196; Aqua Statement No. 1, Exhibit HH1. Consequently, Aqua customer service submitted its report to BCS rather than the Complainant on January 6, 2023, within the 30-day period, and referred the matter to outside counsel. *See* Tr. 196; Aqua Statement No. 1 at 9; Aqua Statement No. 1, Exhibit HH 2. Aqua did not act unreasonably in doing so.

Aqua committed no violations here.

Discrimination

Mr. Hillman and Mrs. Hillman testified that they were treated in a discriminatory manner. Tr. 63, 116, 118. Under 66 Pa.C.S. § 1502, the Code provides:

[n]o public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

A finding that the Complainant was treated in a discriminatory manner must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

When asked on what they were basing their claims of discrimination, references were again made to foreign load and Aqua’s response to Mr. Hillman’s dispute. Tr. 65, 115, 118. As discussed above, there is no basis upon which to find that Aqua violated the Code, a Commission Order or the applicable regulations with respect to foreign load or providing reasonable service. Absent in the record is substantial evidence to support a finding that Aqua’s service to Mr. Hillman was discriminatory or that he was treated differently or unfairly.

The Complainant cannot prevail on this issue.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant has the burden of proof. 66 Pa.C.S. § 332(a).
3. The Pennsylvania Public Utility Code requires each public utility to provide reasonable service. 66 Pa.C.S. § 1501.

4. The record does not contain substantial evidence to establish that there was continuing foreign load at the service address while the Complainant resided there. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

5. Opinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission. *Norman v Phila. Gas Works*, Docket Number C-2018-2640719 at 30 (Opinion and Order entered Oct. 7, 2021).

6. There is not substantial evidence to support a finding that Aqua engaged in discrimination against the Complainant in violation of 66 Pa.C.S. § 1502.

7. The record does not establish that Aqua provided unsafe or unreasonable customer service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Michael Hillman in *Michael Hillman v. Aqua Pennsylvania, Inc.* at Docket No. C-2023-3038201, is denied.

2. That the Complaint of Michael Hillman in *Michael Hillman v. Aqua Pennsylvania, Inc.* at Docket No. C-2023-3038201, is dismissed.

3. That this matter be marked closed.

Date: May 7, 2024

/s/
Darlene D. Heep
Administrative Law Judge