

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kayleen Herbstritt	:	
	:	
v.	:	C-2024-3052370
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint due to Complainant failing to carry her burden to show that the Company’s current tariff rates were unreasonable or that the Company’s billing practices violated any provision of the Public Utility Code, or any regulation promulgated by the Commission.

HISTORY OF THE PROCEEDING

On November 22, 2024, Kayleen Herbstritt (Complainant or Ms. Herbstritt) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (PAWC, Respondent or Company), averring, *inter alia*, her bills for water and wastewater service to her residence at 14 Tionesta Avenue, Kane, PA (service location) were “incredibly high.” Complaint ¶ 4. She explained, a “new company just bought the borough’s water utility and they’ve

combined our water and sewer and tripled our bills.” *Id.* As relief, Complainant requests the water and sewer bills be separated, or alternatively, that the Commission prevent PAWC from “charging so much.” Complaint ¶ 5. Regarding service by the Commission, Complainant checked the boxes for email, checking the box and initialing next to the email option. Complaint ¶ 9. Complainant subsequently created an eService account with the Commission.

On December 23, 2024, Respondent filed an Answer in which it denied the material allegations of fact in the Complaint. The Company avers it provides water and wastewater service according to the rates, rules, and regulations in its water and wastewater tariffs. PAWC argues its tariffs were authorized by the Commission in *Pa. Pub. Util. Comm’n v. Pennsylvania-American Water Co.*, Docket No. R-2023-3043190 (Opinion and Order entered on July 22, 2024) (July Order). PAWC submits that the July Order was entered following a formal investigation to determine the lawfulness, justness, and reasonableness of the Company’s existing and proposed rates, rules, and regulations.

On December 26, 2024, a Call-In Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on February 27, 2025, at 10:00 a.m. and the case was assigned to Administrative Law Judge Conrad A. Johnson (ALJ Johnson).

On December 27, 2024, a Prehearing Order was served on the parties, reminding the parties of the date and time of the hearing and informing the parties of the applicable procedural rules.

On January 23, 2025, Ms. Herbstritt filed correspondence with the Commission, requesting information regarding rate justification documents, infrastructure and improvement plans, rate comparisons, procedural records, compliance and oversight information, and service quality reports.

On February 17, 2025, counsel for PAWC emailed ALJ Johnson, requesting a continuance of the hearing due to a scheduling conflict. PAWC's counsel stated that Ms. Herbstritt did not object to the continuance.

On February 18, 2025, the Commission issued a Hearing Cancellation Notice, cancelling the hearing scheduled for February 27, 2025.

On February 19, 2025, ALJ Johnson issued the First Interim Order, granting PAWC's motion to continue the hearing.

On March 3, 2025, the Commission issued a Judge Change Notice, reassigning this matter to me.

On March 19, 2025, the Commission issued an Evidentiary Hearing Notice, scheduling an evidentiary hearing for May 8, 2025.

On March 19, 2025, I issued a Prehearing Order.

The evidentiary hearing convened as scheduled on May 8, 2025. Complainant was present and represented herself. Complainant testified and offered Exhibits 1 and 4 into the record, both of which were admitted into the record.¹ Nicholas Stobbe, Esquire, and Michael Gruin, Esquire, were present on behalf of the Company and presented the testimony of Stacey Gress, Director of Rates and Regulatory Compliance for PAWC. PAWC offered Exhibits 1-5, which were admitted into the record.

¹ Complainant's Exhibit 4 is a collection of letters and emails written by individuals purporting to be customers of PAWC, sharing their thoughts and opinions on PAWC's rates. PAWC objected to Complainant's Exhibit 4 on the basis of hearsay. Tr. 22-23. I sustained the objection, but allowed Exhibit 4 into the record, advising that I would not admit Exhibit 4 for the truth of the matter asserted and would not base any finding of fact on the contents of the emails and letters contained in Exhibit 4. Tr. 23-24.

The hearing produced a transcript of 71 pages, which was filed on May 29, 2025.

The record closed upon the conclusion of the evidentiary hearing. Tr. 65.

This matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainant is Kayleen Herbstritt.
2. Respondent is Pennsylvania-American Water Company.
3. Complainant receives water and wastewater service from Respondent. Tr. 35.
4. PAWC's rates are set through a formal rate making proceeding before the Commission. Tr. 36.
5. To initiate a rate proceeding, PAWC makes a large filing, often thousands of pages, containing various data, information, and testimony that explains to PAWC's customers and the parties involved in the rate case the legal arguments PAWC is making to support its rate filing. Tr. 36.
6. When PAWC makes a rate filing, it is required to mail customer notices, and customers receive their notices at the time PAWC makes its rate filing. Tr. 40.

7. A customer can get involved during a rate case by filing a formal complaint and becoming a party to the case or they can testify at a public input hearing. Tr. 40-41.

8. Once PAWC makes its rate filing, the matter is assigned to an administrative law judge who issues a decision, and the matter is eventually considered by the Commission, who enters a final order. Tr. 36.

9. On November 8, 2023, PAWC filed its most recent rate case with the Commission, which was docketed at Nos. R-2023-3043189 and R-2023-3043190 (2023 Rate Case). Tr. 36.

10. The 2023 Rate Case involved rates to be charged to all of PAWC's customers in PAWC's service territory and initially included a total requested increase of \$203.9 million. Tr. 27, 42.

11. During the 2023 Rate Case, there were ten in-person public input hearings held in five different locations, plus two additional public input hearings held by telephone. Tr. 41.

12. Ms. Herbstritt was a PAWC customer at the time it filed its 2023 Rate Case. Tr. 27.

13. Ms. Herbstritt did not file a complaint or testify in any public input hearing during the 2023 Rate Case. Tr. 27.

14. The 2023 Rate Case was fully litigated before the Commission, meaning the parties involved in the case, including the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Commission's Bureau of

Investigation and Enforcement (BIE), and various customer groups, individual customers, and municipalities, were not able to reach a settlement on any aspect of the case. Tr. 39.

15. On July 22, 2024, the Commission entered an Order and Opinion in the 2023 Rate case, authorizing a rate increase of \$99.3 million. Tr. 42.

16. The rates approved by the Commission in its Order and Opinion are memorialized in the Company's water and wastewater tariffs. Tr. 44; PAWC Exhibits 2 and 3.

17. For water service, Ms. Herbstritt is billed under PAWC's rate zone 1, residential. Tr. 36, 45; PAWC Exhibit 2, Fifth Revised Page 16.

18. For wastewater service, Ms. Herbstritt is billed under rate zone 2, combined sewer system. Tr. 36, 46-47; PAWC, Fifth Revised Page 12.

19. At all times, Ms. Herbstritt was billed in accordance with PAWC's Commission-approved tariff. Tr. 46, 47.

20. As a result of the rate changes due to the 2023 Rate Case, Ms. Herbstritt's average monthly water bill increased by 11.6%, and her average monthly wastewater bill decreased by 4.9%. Tr. 56; PAWC Exhibit 5.

21. As a result of the rate changes due to the 2023 Rate Case, the average monthly amount Ms. Herbstritt was billed in total for both water and wastewater service decreased by 1.6%. Tr. 56; PAWC Exhibit 5.

22. PAWC offers a bill discount program for eligible low-income customers. Tr. 57.

23. A two-person household, using an average of 3,201 gallons per month would pay approximately \$182 per month for both water and wastewater service, but if eligible for PAWC's bill discount program, the household would pay anywhere between \$29 to \$129.50 per month for water and wastewater service, depending on the household's income. Tr. 58; PAWC Exhibit 5.

24. On December 2, 2019, PWAC filed an application with the Commission pursuant to Sections 1102 and 1329 of the Public Utility Code, 66 Pa.C.S. §§ 1102, 1329, seeking approval of an asset purchase agreement between PAWC and the Borough of Kane Authority (Authority), the Borough of Kane (Kane) and Wetmore Township by which PAWC would purchase the wastewater system then owned by the Authority (1102 Application). PAWC Exhibit 4.

25. The 1102 Application was noticed in the *Pennsylvania Bulletin*. PAWC Exhibit 4.

26. The parties to the 1102 Application case included: PAWC, the Authority, Kane, Wetmore Township, OCA, OSBA, and BIE. PAWC Exhibit 4.

27. On May 7, 2020, the ALJ assigned to the 1102 Application issued a Recommended Decision recommending that the parties' joint petition for settlement² be approved in its entirety without modification, because it was in the public interest and supported by substantial evidence. Tr. 47-48; PAWC Exhibit 4.

² The joint petition for settlement was submitted by PAWC, OCA, and the Authority. PAWC Exhibit 4. BIE and OSBA submitted letters indicating they did not oppose the settlement. *Id.*

DISCUSSION

In her Formal Complaint, Complainant claimed her water and wastewater bills were too high, and requested that the Commission prevent PAWC from charging these rates and/or separate the water and wastewater bills as they had been prior to the approval of the 1102 Application.

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, 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); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. 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. 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. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Section 1301 of the Code requires that a public utility's rates be just and reasonable. Section 1301 of the Code states as follows: "Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa.C.S. § 1301.

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; *Kossman 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). Where a complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule 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) (*Brockway*). A complainant seeking to evade the effect of an existing tariff provision must prove that facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (noting that the burden to contest an existing tariff is a heavy one) (*Shenango*).

The Commission has recently considered two cases where a customer has challenged an existing, Commission-approved tariff. The Commission considered *Petty v. Community Utilities of Pennsylvania, Inc.*, Docket No. C-2024-3052590 (Opinion and Order entered June 6, 2025) (*Petty*), at a public meeting on May 22, 2025. In *Petty*, the Commission had recently approved a new tariff to allow the utility to begin billing for wastewater services using water usage data from Aqua Pennsylvania Inc., the complainant's water company. The complainant did not object to the new tariff rate but argued that the new tariff rate did not contemplate homeowners or others like him with in-ground irrigation systems. The complainant averred, in part, that the new tariff caused his wastewater bill to increase from \$75 per month to more than \$800 during certain months. As relief, the complainant requested that the tariff be modified or that an alternative metering system be available for customers with irrigation systems.

In response to the complaint, Community Utilities of Pennsylvania, Inc. (CUPA), filed a Preliminary Objection arguing that the actions complained of in the complaint were in compliance with CUPA's Commission-approved tariff and the complaint should be dismissed.

The ALJ assigned to the matter granted the Preliminary Objection and dismissed the complaint prior to a hearing finding that the complaint was legally insufficient because the commission-approved wastewater tariff did not contain a provision that would allow customers to use an alternative metering method. The ALJ wrote, "in asking CUPA to make available an alternative metering system for irrigation systems... [complainant] is asking for the commission to allow CUPA to deviate from its tariff, which the commission has no authority to do."

At public meeting on May 22, 2025, Chairman Stephen M. DeFrank made a motion in which he argued the ALJ's decision must be set aside and remanded to the Office of Administrative Law Judge for a hearing. Chairman DeFrank explained,

Consumers have a right to file a complaint and be heard when they believe that an existing tariff is unreasonable when applied to them. Any prohibition on allowing the utility to deviate from its tariff that the ALJ relied upon should not result in the dismissal of [complainant's] complaint arguing that CUPA's existing tariff is unreasonable as applied to him. Although tariffs are considered prima facie reasonable, that does not mean they cannot be challenged in a complaint. Rather, a complainant seeking to evade the effect of an existing tariff provision must prove that facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.

In this case, when reading [complainant's] complaint in the light most favorable to him, it is not clear that he is not entitled to any relief under any circumstances as a matter of law. It may be, for example, that, despite the heavy burden to contest the application of an existing tariff, the prohibition on using [an alternative metering system] it is not reasonable as applied to [complainant] which [complainant] averred caused his bill to increase to \$800 for certain months. CUPA's Preliminary Objection must be denied, the Initial Decision must be reversed, and the matter remanded to the Office of Administrative Law Judge for further hearings to allow [complainant] the opportunity to demonstrate that CUPA's tariff as applied to him is unreasonable and not have his case dismissed on a preliminary basis.

Petty, Motion of Chairman Stephen A. DeFrank, May 22, 2025 at 1 (citations omitted).

In the instant matter, Ms. Herbstritt's Complaint was not dismissed on a preliminary basis prior to a hearing. Rather, she was provided an opportunity for an evidentiary hearing in which she appeared, testified, and had an opportunity to present exhibits for admission into the record. The Chairman's Motion in *Petty* is instructive in the instant matter in that it explains the burden a complainant must meet when challenging an existing Commission-approved tariff.

In another recent case, the Commission considered *Walia v. Pittsburgh Water & Sewer Authority*, Docket No. F-2022-3032572 (Opinion and Order entered Apr. 20, 2023) (*Walia*). In *Walia*, the complainant argued that there is an inequity in two of the billing practices of The Pittsburgh Water and Sewer Authority (PWSA), specifically: (1) its billing in blocks of 1,000-gallon increments for water consumption; and (2) billing periods that vary from 26-35 days. As relief, the complainant requested that the commission order PWSA to: (1) bill by gallons and maintain a constant calendar date billing period; and (2) if that is not feasible, then apply a standard concept of rounding

whereby up to 1,499 gallons will be billed as 1,000 gallons, anything between 1,500-2,499 gallons will be billed as 2000 gallons, and so on.

Unlike *Petty*, the complainant in *Walia* was provided an opportunity to appear at an evidentiary hearing and presented testimony on the record.

The ALJ assigned to *Walia* issued an Initial Decision in which he denied and dismissed the complaint finding that the complainant did not meet his burden of establishing that PWSA's Commission-approved billing tariff was no longer reasonable or that the application of the existing billing tariff was applied unreasonably. The Commission considered the matter after the complainant filed exceptions.

Following the public meeting on April 20, 2023, the Commission issued an Opinion and Order granting in part and denying in part the complainant's exceptions. In its discussion, the Commission outlined the legal standards in cases where a customer challenges a Commission-approved tariff. *See Walia* at 9. The Commission reiterated that, "Where a complaint involves an existing Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably." *Id.* The Commission determined that the complainant in *Walia* presented evidence that PWSA may not have been billing him in accordance with the billing practices outlined in its Commission-approved tariff or the sample bill available on PWSAS's website. Ultimately, the Commission held that the complainant presented evidence sufficient to initially satisfy the burden of proof, thus shifting the burden to the utility to present evidence to rebut the complainant's evidence. *Id.* at 8. The Commission remanded the matter to the Office of Administrative Law Judge for the receipt of additional evidence and the issuance of a subsequent Initial Decision.

Unlike the Complainant in *Walia*, Ms. Herbstritt is not alleging that the utility is failing to bill her consistent with its Commission-approved tariff. Rather, she is alleging that PAWC's rates are simply too high. As discussed above, the applicable legal standard is clear: Ms. Herbstritt bears the burden of showing the rates are no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway*. A complainant like Ms. Herbstritt who seeks to evade the effect of an existing tariff provision must prove that facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *See Shenango*.

Ms. Herbstritt testified about a document prepared by the Environmental Protection Agency (EPA) entitled, "Water Affordability Needs Assessment: Report to Congress," dated December 2024, which was admitted without objection as Complainant Ex. 1. Ms. Herbstritt testified that in the report, the EPA suggests that the affordability threshold for water and wastewater combined should be less than 4.5% of the median yearly household income. *Id.* She alleged that PAWC's rates caused PAWC's customers to experience bills "greatly exceeding" the EPA's recommended affordability threshold. She alleged the amount Kane Borough customers were paying for water and wastewater service totaled over 8% of the median household income, rather than the 4.5% recommended by the EPA. Tr. 16.

When explaining how she calculated the 8%, Ms. Herbstritt testified she researched Kane Borough's median yearly household income and household size via United States census data and discovered it was \$52,093 and 2.3, respectively. Tr. 17; Complainant Ex. 1. She testified that the EPA report indicates that a person uses, on average, 100 gallons of water per day. Tr. 18. She testified that she multiplied 2.3 people per household each using 100 gallons of water per day per person, which totals 6,900 gallons of water used per household per month. Tr. 18. She testified that based on this usage, the household would have an average monthly water bill of \$148.33 and an average monthly wastewater bill of \$200.21, which totals \$348.53. Tr. 18; Complainant

Ex. 1. She argued this amount constitutes 8% of the average household income (\$52,093 average yearly income / 12 months = \$4,341.10 average monthly income; \$348.53 average monthly water/wastewater bill / \$4,341.10 average monthly income x 100 = 8.02%). Tr. 18; Complainant Ex. 1.

Ms. Herbstritt further argued that PAWC is not utilizing the federal and state grants available to it, leading the Company to seek funding from its customers for infrastructure upgrades, which results in “excessive rates.” Tr. 16, 19. She testified that surrounding townships do not experience this kind of “inflation” of their bills. Tr. 16-17, 19.

Ms. Herbstritt offered Exhibit 4, which is a collection of what she termed “impact statements” from individuals and businesses in her community. Tr. 21; *See* Complainant Ex. 4. She testified that her “entire community” is feeling the effects of PAWC’s “excessive rates.” Tr. 20-21. The Company objected to the admission of Complainant’s Exhibit 4 on the basis of hearsay. Tr. 22-23. Ultimately, I sustained the objection but admitted Exhibit 4 not for the truth of the matter asserted. Tr. 23. I explained I would not base any findings of fact on the contents of the documents contained in Complainant Exhibit 4. Tr. 23-24.

On cross examination, the Company questioned Ms. Herbstritt on the calculations she used. While the Company did not object to the numbers she used for the average monthly income or the average household size, it did dispute her use of 100 gallons of water used per day per person. The Company directed Ms. Herbstritt to a portion of the EPA report which indicates the average usage is 50 gallons per day per person, not 100 as Ms. Herbstritt used in her calculations. Tr. 29-30. When asked where she got her 100 gallons per day number from, she indicated it was from page 23 of the EPA report, under the heading, “Calculating Drinking Water and Wastewater Bills.” Tr. 30-31.

This portion of the report reads,

Calculating Drinking Water and Wastewater Bills

Monthly drinking water and wastewater bills are calculated from rate data for a specific quantity that is assumed to be sufficient to meet the basic needs of the household. This will depend critically on the assumptions of the daily water needs per person in the size of the household.

- **Daily Per-Person Water Usage.** Water affordability studies generally seek to evaluate the cost of water used for basic health and cleanliness needs, including drinking water consumption, fruit preparation, personal hygiene (bathing, handwashing, oral care), sanitation (flushing toilets), and basic cleaning (washing clothes, dishes, etc.). Focusing on a basic hygiene use value implicitly assumes that there are no major leaks within the household. The selection of a per-person water use value has a significant impact on the resulting estimates of a household's total water bill. **Patterson et al (2023) found that the number of households with unaffordable water services was 1.7 times greater when a household of the average size consumes approximately 100 gallons per person per day compared to approximately 50 gallons.** Similarly, Cardoso and Wichman (2022a) found that the percent of households with unaffordable bills rose from 8.4% to 14.2% when the assumed water usage increased from 40 gallons per person per day to 75 gallons per person per day, respectively. Appendix D includes information on basic water usage volumes used throughout the literature.

Complainant Ex. 1 (emphasis added).

This portion of the report does not support Ms. Herbstritt's contention that the average daily water usage per person per day is 100 gallons. Ms. Herbstritt herself agreed under cross examination. Tr. 32.

The Company presented the testimony of Ms. Stacey Gress, Director of Rates and Regulatory Compliance for PAWC. Ms. Gress testified about PAWC's rate-making process before the Commission, as well as its most recent rate case in 2023 and its current tariff. Tr. 35-47. Ms. Gress also testified about PAWC's acquisition of the Kane Water System in 2020. Tr. 47-51.

Ms. Gress testified that she performed a counter-analysis to rebut Ms. Herbstritt's affordability calculations. Tr. 51-52; PAWC Ex. 5. Ms. Gress testified that based on her reading of the EPA report, the average per person per day water usage was 50 gallons, not 100. Tr. 53. Utilizing the same average household size (2.3) and average annual income (\$52,093) as used by Ms. Herbstritt, Ms. Gress calculated the average monthly water bill to be \$78.89 and the average monthly wastewater bill to be \$103.60, for a total monthly water/wastewater bill of \$182.49. Tr. 54-55; PAWC Ex. 5. Ms. Gress testified that this amount is below the 4.5% affordability threshold Ms. Herbstritt claims is applicable. Tr. 54-55; PAWC Ex. 5. Ms. Gress testified that Ms. Herbstritt's calculations simply overstated the average per person per day water usage, thus inflating the monthly cost of water and wastewater service to PAWC's customers. Tr. 55.

Ms. Gress further testified about Ms. Herbstritt's bills after the 2023 Rate Case. She testified that Ms. Herbstritt's water bill increased, on average, by about 11.6% per month, and the wastewater portion of her bill decreased, on average, by approximately 5% per month. Tr. 56. When considering the water and wastewater bills together, Ms. Gress testified that Ms. Herbstritt's total bill for water and wastewater service increased by about 1.6%, on average. Tr. 56.

Finally, Ms. Gress testified about PAWC's bill discount program, which aims to make bills more affordable for PAWC's low-income customers. Tr. 58.

As discussed above, Ms. Herbstritt bears the burden of proving that the rates in PAWC's Commission-approved tariff are no longer reasonable or the application of the existing tariff at issue is applied unreasonably. She must prove that facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.

In this case, Ms. Herbstritt has failed to meet her burden. Her calculations regarding the monthly water affordability were flawed and she was unable to present evidence to corroborate her use of 100 gallons per day per person. *Even if* she was correct to use 100 gallons per day per person, she did not present any evidence that facts and circumstances had changed so drastically since the 2023 Rate Case so as to render the tariffed rates unreasonable. The tariffed rates were found to be reasonable in 2023, and there is a presumption that they still are reasonable. Ms. Herbstritt did not present substantial evidence to suggest otherwise. Although Ms. Herbstritt expressed her opinion that PAWC's rates are too high, assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Regarding her request that the water and wastewater be billed separately, she presented no evidence that PAWC's current billing practice violates its tariff or is inconsistent with the Commission's decision in the 1102 Application case.

While I find that Ms. Herbstritt failed to meet her burden of proof, I appreciate the interest she has taken in trying to explain the impact PAWC's rates have had on the members of her community. Ms. Herbstritt collected almost 50 letters and emails from individuals and businesses in her community regarding the impact of PAWC's rates. *See* Complainant Exhibit 4. While the contents of these letters and

emails were excluded from evidence on hearsay grounds, I believe they demonstrate Ms. Herbstritt's ability to organize and mobilize her community. As I explained at the hearing, I encourage Ms. Herbstritt to become involved in PAWC's next rate case, whenever that may be, by: (1) filing a formal rate complaint in the rate case and participating as an active or inactive party; (2) filing written comments; or (3) providing testimony at a public input hearing, if one is held. *See* Tr. 68-69.

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. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).
3. To 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); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).
4. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
5. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

6. 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. 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. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

7. Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission. 66 Pa.C.S. § 1301.

8. 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).

9. Where a complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule 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).

10. A complainant seeking to evade the effect of an existing tariff provision must prove that facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Township Board of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

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

12. Complainant did not present substantial evidence that Respondent's tariffed rates were no longer reasonable or that they were being applied unreasonably.

13. Complainant did not present substantial evidence that Respondent's billing practices violated any provision of the Public Utility Code, or any regulation promulgated by the Commission. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed at Kayleen Herbstritt v. Pennsylvania-American Water Company at Docket No. C-2024-3052370 is denied.
2. That the Secretary's Bureau shall mark this case closed.

Date: June 23, 2025

_____/s/
Emily I. DeVoe
Administrative Law Judge