

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pamela Zelaya	:	
	:	
v.	:	F-2025-3053457
	:	
	:	
The York Water Company	:	

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision sustains the Formal Complaint of a water and wastewater customer alleging that York Water Company violated the Public Utility Code, a Commission regulation, a Commission Order, or a company tariff by overbilling the customer.

**HISTORY OF THE PROCEEDING**

On February 6, 2025, Pamela Zelaya (Complainant or Ms. Zelaya) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against The York Water Company (York Water, Company or

Respondent).<sup>1</sup> In the Complaint, Ms. Zelaya checked the boxes alleging incorrect charges on her bill, and “Other.” Ms. Zelaya attached a letter to the Complaint explaining that she settled on a new home on June 18, 2024, but did not move into the property until June 26, 2024. However, she was unable to use water due to plumbing issues, which were not repaired until July 3, 2024. The letter further stated the following:

I received an estimate first bill (which I thought was high considering the fact that I was not living in the home until the 26th and was unable to use the water until after July 3rd. My initial bill was an estimated bill totaling \$119.00 (covering a period of 6/18 - 7/24) which I paid as a good faith payment. On September 10th, I received a letter from York Water advising that they noticed my water bill was higher than usual. I did not receive that bill until September 14th, which is also attached hereto, totaling [\$]1,698.91 covering period of 07/24/2024 through 08/26/24. I immediately contacted York Water and spoke with Ana. Ana was dismissive and just kept reiterating that it was billed based on the water meter. It is stated in the informal complaint's decision that I advised Ana that I had watered plants and used a sprinkler system. This is NOT true. Ana asked me if I was watering my grass, attempting to blame the bill on the same. I told her that I occasionally watered my shrubs with the hose. I do not have a sprinkler system and did not water my grass. I called and spoke with the project manager, Stewart and he advised that several days before my settlement date, his landscaping crew laid the sod and that they were watering the sod nonstop throughout the day and night for days to make sure the sod stuck. The project manager is willing to testify on my behalf as he believes this bill is extremely high and may be the responsibility of the builder. I was not in that house long enough with the use of running water to utilize the stated volume of water and/or sewage. I could not flush the toilets, shower, etc.

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<sup>1</sup> The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 4024024. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

Compl. Attach.

On March 3, 2025, York Water filed a request for an extension of time to file an Answer to the Complaint, which was granted.

On March 17, 2025, York Water filed an Answer to the Formal Complaint which admitted in part and denied in part various material allegations of the Complaint.

By Hearing Notice dated March 26, 2025, an Initial Call-In Telephonic Hearing was scheduled for June 3, 2025, and the matter was assigned to me.

A Prehearing Order was issued and served on March 26, 2025, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On June 3, 2025, the hearing convened as scheduled. Ms. Zelaya appeared *pro se* and testified on her own behalf. Ms. Zelaya sponsored four exhibits which were admitted into the record. Alexandra C. Chiaruttini, Esq., appeared on behalf of York Water. York Water presented the testimony of one witness, Savannah Harlacher, a Customer Service Manager with York Water. Ms. Harlacher sponsored three exhibits, which were admitted into the record. The following exhibits were admitted into the record:

Compl. Exhibit A – Complainant’s bills  
Compl. Exhibit B – Documentation from builder about plumbing issues  
Compl. Exhibit C – Invoice from moving company  
Compl. Exhibit D – Information about builder’s final water bill

York Exhibit A – Application for Water Service  
York Exhibit B – Start service work order, June 18, 2024  
York Exhibit C – Account summary

The record closed on June 24, 2024, when the 57-page transcript was filed with the Commission.

### FINDINGS OF FACT

1. The Complainant is Pamela Zelaya, who resides at 501 Benjamin Road, Hanover, Pennsylvania, 17331 (Service Address). Tr. 8.
2. The Respondent is York Water Company, a jurisdictional public utility, which provides water service to Complainant at the Service Address. Tr. 8.
3. On June 13, 2024, Complainant contacted York Water to request water and wastewater service in her name, effective June 18, 2024. Tr. 13; York Ex. A.
4. Complainant closed her purchase of the service address on June 18, 2024, at 3:00 p.m. Tr. 8, 26.
5. Complainant visited the property before closing but did not return immediately after closing. Tr. 13, 15.
6. Complainant did not move her belongings into the home until June 26, 2024. Tr. 8, 26; Compl. Ex. C.
7. Complainant resides alone at the Service Address. Tr. 9.
8. After moving into the property, Complainant ran a cycle of laundry and the water backed up. Tr. 8.

9. Complainant was unable to use water until the plumbing was repaired. Tr. 8.
10. The plumbing was repaired on July 3, 2024. Tr. 8.
11. On July 4, 2024, Complainant went to visit her son until July 9, 2024. Tr. 9.
12. The grass at the service address was installed several days before her settlement date of June 18, 2024. Tr. 9, 14.
13. A meter reading was obtained by York Water on June 18, 2024. Tr. 37-38; York Ex. B.
14. The water meter at the service address was installed on May 31, 2024. Tr. 42.
15. Prior to the account being in Complainant's name, the water and wastewater account for the service address was in the name of DRB Homes (the builder) for less than three weeks. Tr. 37.
16. The builder continuously watered the grass prior to closing. Tr. 9.
17. The actual meter reading at the service address was not obtained for the July 2024 bill for unspecified reasons. Tr. 47, 48.
18. York Water issued its first bill to Complainant for water and wastewater services between June 18, 2024, and July 24, 2024, which was based on

estimated residential usage of 2,500 gallons for the meter reading date of July 24, 2024. The estimated bill was \$119. Tr. 17-18, 40.

19. The next month, York Water read her meter on August 25, 2024, for the billing period of July 24, 2024, through August 26, 2024. York water issued a bill to Ms. Zelaya for the use of 69,600 gallons which included water used since June 18, 2024, not previously accounted for in the first, estimated, bill. Tr. 40-41; Compl. Ex. A; York Ex. C.

20. The water and wastewater bill that was issued in August of 2024 for the billing period of July 24, 2024, through August 26, 2024, totaled \$1,698.71. Tr. 12, 41; Compl. Ex. A; York Ex. C.

21. For the August 2024 bill, the meter read that a total of 72,100 gallons passed through the meter between June 18, 2024, and August 26, 2024. Tr. 41.

22. For the August 26, 2024 – September 24, 2024, billing period Ms. Zelaya was billed for 5,800 gallons of water for a total of \$185.61. Tr. 31-32; Compl. Ex. A at 2; York Ex. C.

23. At the time of the hearing, Complainant's water bills had been consistent for eight months with an average usage of 1,400 gallons, with a high of 1,800 gallons and a low of 1,300 gallons. Tr. 10, 42-43, 45; Compl. Ex. A; York Ex. C.

24. Complainant has been paying an extra \$100 per month to pay off the balance from the August 2024 bill. Tr. 43.

25. York Water is not able to obtain daily usage readings through the meter that is used at the service address. Tr. 48-49.

26. Because the meter reading from July 24, 2024, was an estimated reading, York Water cannot determine whether any of 72,100 gallons was used between June 18, 2024, and July 24, 2024. Tr. 51-52.

27. When Complainant did the walkthrough at 3:00 p.m. on June 18, 2025, there were sprinklers all around the home. Tr. 14-15.

28. Complainant took ownership of the home at 4:00 p.m. on June 18, 2025. Tr. 15.

29. There were no hoses or sprinklers when Complainant moved her belongings into the residence. Tr. 14.

30. The builder's final water bill was for a total amount of \$1,342 for the use of 54,600 gallons. Tr. 24.

31. Complainant does not know if the builder continued to water the lawn after closing. Tr. 30.

32. Complainant does not own any sprinklers to water her lawn. Tr. 21.

33. Complainant does not have a swimming pool or hot tub. Tr. 21.

34. Complainant has two bathrooms but only uses one. Tr. 20.

35. Complainant's total water and wastewater balance at the time of the hearing was \$1,046.45. Tr. 44-45.

## DISCUSSION

The Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, 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 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlt. 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 Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). 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 decision of the Commission must be supported by substantial evidence. 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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 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 by a preponderance of the 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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore v. Nat'l Fuel Gas Distrib.*, Docket. No. C-2014-2458555 (Final Order entered Aug. 25, 2015) (*Moore*). It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pa. Comm'n on Crime & Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005)).

Section 1501 of the Code mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. § 1501.

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984). Section 1501 “does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.” *Re Metro. Edison Co.*, 80 Pa.P.U.C. 663, 672 (1993). Therefore, the test to determine the

adequacy of a utility's service and facilities is that of reasonableness. *Thurby v. West Penn Power*, Docket No. C-2011-2254048 (Order entered Apr. 4, 2013); *Bertsch v. PPL Elec. Utils. Corp.*, Docket No. C-2011-2251784 (Final Order entered Apr. 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket No. C-2008-2061244 (Final Order entered Jan. 28, 2010).

### High Bill

Complainant has alleged that there are incorrect charges on her gas bill. As the Complainant in this matter, Ms. Zelaya has the burden of proving that she was overbilled by York Water. 66 Pa.C.S. § 332(a). Ms. Zelaya argues that she did not and could not have used the amount of water that she was billed for using.

Ms. Zelaya contacted York Water on June 13, 2024, to request water and wastewater service in her name, effective June 18, 2024. Tr. 13; York Ex. A. York Water issued its first bill to Complainant for water and wastewater services between June 18, 2024, and July 24, 2024, which was based on estimated residential usage of 2,500 gallons for the meter reading date of July 24, 2024. The estimated bill was for \$119. Tr. 17-18, 40. The next month, York Water read the meter on August 26, 2024. York Water issued a bill to Ms. Zelaya for the use of 69,600 gallons, which included water used since June 18, 2024, not previously accounted for in the first, estimated, bill. Tr. 40-41. This bill totaled \$1,698.71. Tr. 12, 41; Compl. Ex. A at 1; York Ex. C. The next bill, for the billing period of August 26, 2024, through September 24, 2024, stated that Complainant used 5,800 gallons of water for a total water and wastewater bill of \$185.61. Tr. 31-32; Compl. Ex. A at 2; York Ex. C. Since then, the usage at the service address has been between 1,300 and 1,800 gallons per month. Tr. 31-32, 42; Compl. Ex. A; York Ex. C. Ms. Zelaya argues that the bills for the billing periods of June 18, 2024 – July 24, 2024, July 24, 2024 – August 26, 2024, and August 26, 2024 – September 24, 2024, are too high. Tr. 17-18, 31-32.

York Water argues that Ms. Zelaya is responsible for any water that is used after she had an account opened in her name. It contends that there is no evidence that the meter is faulty and that the water that flowed through the meter was used by Ms. Zelaya or someone else. Tr. 54. York Water's witness, Ms. Savannah Harlacher, explained that the meter at the service address was installed on May 31, 2024, and was approximately one month old when the account was opened in Ms. Zelaya's name. Tr. 42. York Water has not tested the meter since installation, but Ms. Harlacher explained that the readings have been consistent since the high bill. *Id.*

In cases of alleged high billing, the Commission applies the *Waldron* rule, which provides that to establish a *prima facie* case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that the complainant's billing history shows no prior abnormalities. Once the complainant makes out a *prima facie* case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the Complainant. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980); *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980).

In *Milkie*, the Commonwealth Court of Pennsylvania further refined the *Waldron* rule by holding:

[w]hile the [*Waldron*] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a *prima facie* case of overbilling by a utility company, we believe this view is too restrictive. Rather, the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may, nonetheless, prove his case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the

complainant is protected from dismissal because of his inability to marshal *direct* proof that his meter had malfunctioned.

*Milkie*, 768 A.2d at 1219-1220 (emphasis in original, footnote omitted) (citing *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1235 (Pa. 1983)). In *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (*Thomas*), the Commission explained:

the *Waldron* Rule allows a complainant to establish a prima facie case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not *changed or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*”

*Thomas*, at 5 (emphasis in original) (citation omitted).

Ms. Zelaya lives alone at the service address. Tr. 9. The Service address has two bathrooms, but Complainant only uses one. Tr. 20. Complainant does not own any sprinklers to water her lawn and she does not have a swimming pool or a hot tub. Tr. 21. Ms. Zelaya did not move into the property until eight days after opening her water account. Tr. 8, 26; Compl. Ex. C. Further, for a period of time after moving in, Ms. Zelaya was unable to use much water due to plumbing issues. Tr. 8, 26; Compl. Ex B. The first three bills that Ms. Zelaya received from York water were abnormal and considerably higher than her average use since the high bills. *See supra*, p. 10. Thus, Complainant has presented a *prima facie* case of overbilling for the billing periods of June 18, 2024 – July 24, 2024, July 24, 2024 – August 26, 2024, and August 26, 2024 –

September 24, 2024. Therefore, the burden of going forward with evidence to rebut the Complainant's *prima facie* case shifts to York Water. *Milkie*.

However, York Water did not present evidence to sufficiently rebut the Complainant's *prima facie* case. The record shows that there *may* be an explanation for the June 18, 2024 – July 24, 2024, and July 24, 2024 – August 26, 2024, billing periods. The bill for the June 18, 2024 – July 24, 2024, period was an estimated bill, which was high compared to Ms. Zelaya's average usage. The estimated usage was 2,500 gallons. The second bill, for the period of July 24, 2024 – August 26, 2024, was the first actual read of Ms. Zelaya's meter. This means that the usage may or may not include usage during the prior billing period if it was not accounted for in the estimated bill. Tr. 40-41. The second bill was considerably higher than Ms. Zelaya's average usage. Ms. Zelaya was billed for 69,600 gallons (72,100 gallons minus the 2,500 gallons Ms. Zelaya was billed for in the prior estimated bill). Tr. 40-41; Compl. Ex. A; York Ex. C.

Ms. Zelaya requested that the account be opened in her name starting June 18, 2024. Tr. 13; York Ex. A. York Water read the meter at the property prior to putting the account in Complainant's name. Tr. 37-38; York Ex. B. Prior to the account at the service address being in Ms. Zelaya's name, it was in the name of the builder "for less than three weeks." Tr. 37. Several days prior to the Settlement date, the builder installed sod at the service address. Tr. 14. Ms. Zelaya closed on the property on June 18, 2024, at approximately 4:00 p.m. Tr. 8, 26. Prior to closing, Complainant visited the property at around 3:00 p.m. to do a walkthrough. During the walkthrough, sprinklers were on at the property, watering the sod around the home. Tr. 14-15. It is not clear what time the meter was read on June 18, 2024, prior to placing the account in Ms. Zelaya's name.<sup>2</sup>

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<sup>2</sup> I note that the exhibit that York Water purports to be the "start read" work order was created on July 15, 2025, but has a note referencing a read on June 18, 2025, indicating a read of 54,672 gallons on June 18, 2024. York Ex. B. York Water did not

Nonetheless, it is relatively clear that the grass was being watered by someone other than Ms. Zelaya while the account was in her name on June 18, 2024. What is not clear is whether this action continued for any extended period of time.

Ms. Zelaya did not return to the property after closing and did not return to the residence until June 26, 2024, when she physically moved in. Tr. 8, 26; Compl. Ex. C. So, the last Ms. Zelaya knew, there were hoses wrapped around the house with the water running on June 18, 2024. She does not know if the builder continued to water the lawn for any period of time after that, prior to her move on June 26th. Tr. 30-31. Therefore, it is theoretically possible that there was use of the water by the builder that caused high usage, which did not show up on the first bill because it was estimated.

The possible use of the water by a third party does not, however, explain the high bill for the August 26, 2024 – September 24, 2024, billing period. For this billing period Ms. Zelaya was billed for 5,800 gallons of water. Tr. 31-32; Compl. Ex. A at 2; York Ex. C. While not as extreme as the prior bill, this is more than double the usage in her highest bill after this period and calls the accuracy of the prior bill into question. Also negatively influencing the perceived accuracy of the prior bill, is the fact that the builder was watering the sod over a period of approximately three weeks prior to the opening of Ms. Zelaya's account and allegedly used 54,600 gallons. Tr. 49. This is less than the possible usage if the builder continued to water the lawn during Ms. Zelaya's eight-day absence.<sup>3</sup>

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provide the work order for the June 18, 2024, read or other verification of the accuracy of that note.

<sup>3</sup> Ms. Zelaya's usage after the bills complained of here (using the high of 1,800 gallons per month) subtracted from 72,100 total gallons from the first two billing periods equals approximately 68,900 gallons ( $72,100 - 1,800 \times 2 = 68,900$ ) over *eight days*. Compare that with 54,600 gallons over approximately *three weeks* for the builder.

York Water's use of an estimated bill for Ms. Zelaya's very first bill has made it impossible to pinpoint whether the high bills were due to third party usage of the water or inaccurate billing. However, a comparison of the high bills to the builder's final bill and Ms. Zelaya's average bill, suggests that Ms. Zelaya was improperly billed. Additionally, as explained below, York Water has, in this instance, provided unreasonable service and violated Commission regulations by providing an estimated bill without valid reason.

Ms. Zelaya has met her ultimate burden of proving that she was overbilled by York Water. Therefore, York Water shall recalculate Ms. Zelaya's bills for the billing periods of June 18, 2024 – July 24, 2024, July 24, 2024 – August 26, 2024, and August 26, 2024 – September 24, 2024, using Ms. Zelaya's average usage after September 24, 2024, and provide a refund to Ms. Zelaya for any additional amount already paid by Ms. Zelaya.

#### Estimated Bill

As explained above, York Water issued an estimated bill for the June 18, 2024 – July 24, 2024, billing period. This billing period covers the time period that Ms. Zelaya was not present at the property or was unable to use her water due to plumbing issues.

Utilities are permitted to use estimated bills under specific circumstances as outlined in the Commission's regulations. The regulations establish clear parameters for when estimated billing is allowed and the conditions that must be met. The regulations state, in relevant part, the following:

**§ 56.12. Meter reading; estimated billing; customer readings.**

Except as provided in this section, a public utility shall render bills based on actual meter readings by public utility company personnel.

....

(2) *Estimates for bills rendered on a monthly basis.* If a public utility bills on a monthly basis, it may estimate usage of service every other billing month, so long as the public utility provides a customer with the opportunity to read the meter and report the quantity of usage in lieu of the estimated bill. The resulting bills must be based on the information provided, except for an account when it is apparent that the information is erroneous.

....

(3) *Estimates permitted under exigent circumstances.* A public utility may estimate the bill of a customer if extreme weather conditions, emergencies, equipment failure, work stoppages or other circumstances prevent actual meter reading.

(4) *Estimates when public utility personnel are unable to gain access.* A public utility may estimate the bill of a customer if public utility personnel are unable to gain access to obtain an actual meter reading, as long as the following apply:

(i) The public utility has undertaken reasonable alternative measures to obtain a meter reading, including, but not limited to, the provision of preaddressed postcards upon which the customer may report the reading or the telephone reporting of the reading.

(ii) The public utility, at least every 6 months, or every four billing periods for public utilities permitted to bill for periods in excess of 1 month, obtains an actual meter reading or customer supplied reading to verify the accuracy of the estimated readings.

(iii) The public utility, at least once every 12 months, obtains an actual meter reading to verify the accuracy of the readings, either estimated or customer read.

....

(7) *Limitation of liability.* If a water public utility has estimated bills and if the customer or occupant during that period has consumed an amount of water in excess of normal seasonal usage because of a verified leak that could not reasonably have been detected or other unknown loss of water, the customer is not liable for more than 150% of the average amount of water consumed for the corresponding period during the previous year. This section does not apply when the water public utility was unable to gain access and has complied with paragraph (4).

....

(9) *Notice.* The public utility shall inform existing customers of their rights under this section and 66 Pa.C.S. § 1509 (relating to billing procedures).

52 Pa. Code § 56.12(2)-(4), (7), (9).

There was no evidence presented that York Water follows or was following the practice of providing estimated bills every other billing month or that it provided Ms. Zelaya an opportunity to read the meter and provide the usage. Further, York Water did not offer a cause or claim exigent circumstance that required providing an estimated bill, only that “there could be a number of reasons for that.” Tr. 47. Lastly, there was no testimony that York Water was unable to gain access to the meter to obtain a reading.

Without a valid reason for providing the estimated bill, York Water has violated 52 Pa. Code § 56.12 and has provided unreasonable service. While this violation may seem insignificant in most situations when the next bill accounts for any under or overbilling, it has caused a myriad of problems here.

The estimated bill makes it impossible to isolate when the meter recorded the high usage. Was it during the eight days Ms. Zelaya was not in the home after closing? Was it when Ms. Zelaya was unable to use her water? Or was it in the billing period following the estimated bill? York Water's meters do not record, and York Water is unable to obtain data about daily usage. Tr. 48-49, 51-52. Because it is not possible to determine when the meter recorded the high usage, *if* the high usage was from the eight days Ms. Zelaya was not at the service address after closing, York Water has practically removed Ms. Zelaya's option to provide proof to the builder and request reimbursement or pursue action against the builder for reimbursement.

Having concluded that York Water violated the Public Utility Code, Commission Regulations, or a Commission Order, it is appropriate to consider whether the Commission should assess a civil penalty for the violation.

A public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to \$1,000 per violation for every day of that violation's continuing offense. *See* 66 Pa.C.S. § 3301(a)-(b). The Commission's policy statement at 52 Pa. Code § 69.1201 establishes specific factors and standards the Commission will consider in evaluating litigated cases involving violations and in determining whether a fine is appropriate. *See also Rossi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000).

Having reviewed the factors in 52 Pa. Code § 69.1201, I find that the requirement that York Water recalculate her bills and reimburse Ms. Zelaya for any charges above her average usage is sufficient to deter future violations of this type by York Water and no further penalty is necessary.

## CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. A complainant must show, by a preponderance of the evidence, 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 (Opinion and Order entered Feb. 8, 1990); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976).
4. The decision of the Commission must be supported by substantial evidence or 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. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. 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. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).
5. Once 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 by a preponderance of the 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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

6. In cases of alleged high billing, to establish a prima facie case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that the complainant's billing history shows no prior abnormalities. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980); *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980).

7. A public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. §1501.

8. The Commission may not sustain a complaint pursuant to 66 Pa.C.S. § 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984).

9. The test to determine the adequacy of a utility's service and facilities is that of reasonableness. *Thurby v. West Penn Power*, Docket No. C-2011-2254048 (Order entered Apr. 4, 2013); *Bertsch v. PPL Elec. Utils. Corp.*, Docket No. C-2011-2251784 (Final Order entered Apr. 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket No. C-2008-2061244 (Final Order entered Jan. 28, 2010).

10. If a public utility bills on a monthly basis, it may estimate usage of service every other billing month, so long as the public utility provides a customer with

the opportunity to read the meter and report the quantity of usage in lieu of the estimated bill. The resulting bills must be based on the information provided, except for an account when it is apparent that the information is erroneous. 52 Pa. Code § 56.12(2).

11. A public utility may estimate the bill of a customer if extreme weather conditions, emergencies, equipment failure, work stoppages or other circumstances prevent actual meter reading. 52 Pa. Code § 56.12(3).

12. A public utility may estimate the bill of a customer if public utility personnel are unable to gain access to obtain an actual meter reading. 52 Pa. Code § 56.12(4).

13. The Complainant has met her burden of proving that The York Water Company violated the Public Utility Code, a Commission regulation, a Commission Order, or a company tariff and improperly billed Complainant.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Pamela Zelaya in Pamela Zelaya v. The York Water Company at Docket No. F-2025-3053457 is sustained.

2. That within thirty (30) days of the entry date of the Final Order of the Commission, The York Water Company shall recalculate Ms. Zelaya's bills for the billing periods of June 18, 2024 – July 24, 2024, July 24, 2024 – August 26, 2024, and

