

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Justin Henry	:	
	:	
v.	:	F-2025-3053872
	:	
Columbia Water Company	:	

**INITIAL DECISION**

Before  
Emily A. Farren  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision sustains, in part, and dismisses, in part, the Formal Complaint of a water customer as follows: (1) sustains as to the PennVEST surcharge calculation and (2) dismisses as to the monthly customer charge.

**HISTORY OF THE PROCEEDING**

On February 27, 2025, Justin Henry (Complainant or Mr. Henry) filed a Formal Complaint<sup>1</sup> against Columbia Water Company (Columbia) with the Pennsylvania

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<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 4037020, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

Public Utility Commission (Commission). Mr. Henry checked the box “other” on the Formal Complaint form and explained as follows:

The decision was made to run a service line 260’ from my house to a Columbia Water line. Since then, the customer at 4119 Marietta Ave [Complainant’s Service Address] has suffered higher charges for a normal sized house because of the meter charges. 99.2% of all Columbia Water customers have a 5/8” meter, but because of the water main location at 4119 Marietta Ave the customer is forced to pay elevated charges no matter how much water is used.

Complaint ¶ 4.

For relief, Mr. Henry requested “Columbia Water come up with a solution where I no longer pay more than what a 5/8 meter customer pays” and reimbursement of additional fees previously charged if the Commission determines the fees unjustified. *Id.*, ¶ 5.

On March 28, 2025, Columbia filed an Answer with New Matter to the Complaint. In its Answer, Columbia admitted or denied the allegations of the Complaint. Specifically, Columbia denied that: (1) charges on Complainant’s bill are related to the location of the water main; or (2) charges on Complainant's bill are related to a “normal sized house.” Answer ¶ 4. Instead, Columbia avers that it bills Complainant in conformity with its Commission approved tariff, i.e., specific rates by meter size. *Id.* Columbia further elaborated in New Matter that it cannot charge Complainant a rate other than the rate specified in its tariff. Columbia concluded its Answer with New Matter by requesting dismissal of the Complaint.

The Answer with New Matter dated March 28, 2025, contained a Notice to Plead for Mr. Henry to file a Reply to Columbia's New Matter within 20 days of service. Mr. Henry did not file a Reply to Columbia's New Matter.

On March 28, 2025, Columbia filed Preliminary Objections to the Complaint wherein Columbia sought dismissal of the Complaint, alleging Complainant is not entitled to relief as a matter of law because Columbia is adhering to its tariff. A Notice to Plead within 10 days of service accompanied the Preliminary Objections. Mr. Henry did not file a response.

On April 30, 2025, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On May 7, 2025, I issued an Interim Order denying Columbia's Preliminary Objection and directed an evidentiary hearing be scheduled.

On May 8, 2025, the Commission issued a telephonic hearing notice setting a call-in telephonic hearing for this matter for July 2, 2025, at 10:00 a.m. In anticipation of the hearing, I issued a prehearing order on May 8, 2025, setting forth various rules that would govern the July 2, 2025, hearing.

On May 20, 2025, Respondent filed a Motion to Continue Hearing due to Counsel's unavailability. A Cancelled/Rescheduled Notice issued May 21, 2025, informed the parties of the rescheduled hearing on July 15, 2025, at 10:00 a.m.

The evidentiary hearing convened as scheduled on July 15, 2025. Complainant appeared on his own behalf. Complainant offered no exhibits at the hearing. Whitney E. Snyder, Esq., appeared at the hearing on behalf of Columbia, along with one witness, David Lewis, President and General Manager of Columbia.

The following eight exhibits were admitted into the record on behalf of Columbia:

1. CWC Exhibit 1– Meter Report
2. CWC Exhibit 2 – Picture of meter showing size
3. CWC Exhibit 3 – Picture of meter showing ID
4. CWC Exhibit 4 – Water bills
5. CWC Exhibit 5 – Columbia Water Company Residential Customers  $\frac{3}{4}$ ” Meter or Greater
6. CWC Exhibit 6 – Justin Henry’s Informal Complaint with the Bureau of Consumer Service
7. CWC Exhibit 7 – January 18, 2024, Opinion and Order
8. CWC Exhibit 8 – Tariff

The record in this case consists of the above-referenced exhibits and a 43-page transcript. The record closed on July 21, 2025, when the Commission received the transcript. For the reasons discussed below, the Formal Complaint is sustained, in part, and dismissed, in part.

## FINDINGS OF FACT

1. Complainant is Justin Henry, who resides at 4119 Marietta Avenue, Mount Joy, PA 17552 (Service Address).

2. The Service Address is a single-family dwelling and occupied by two people. Tr. 8-10.

3. Respondent is Columbia Water Company, a jurisdictional public utility, which provides residential water service to the Complainant at the Service Address.

4. On December 27, 2024, Complainant contacted the Commission and filed an informal complaint against Columbia Water Company that disputed the amount/calculation of the monthly PennVEST surcharge and monthly customer charge.

5. On February 27, 2025, Complainant filed a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 4037020.

6. The water meter installed at the Service Address is a 1-inch cast iron meter. Tr. 16-17; CWC Exhs. 1-2.

7. Respondent's customer classifications are as follows: Residential, Commercial, Industrial, Public, Private Fire Protection, and Public Fire Protection. CWC Exh. 7 at 135.

8. In practice, Respondent bases two of the charges – the PennVEST surcharge and the monthly customer charge – on customers’ meter size. Tr. 21-23; CWC Exh. 4.

*PennVEST surcharge*

9. The calculation of the PennVEST surcharge is based, in part, on Equivalent Dwelling Units (EDUs). Tr. 21-22; CWC Exh. 8 at 6.

10. An EDU is a standard unit used across the water industry. Tr. 22.

11. An EDU represents the average demand created by a single-family dwelling unit on public utilities, particularly with respect to water and waste systems. Tr. 22.

12. Columbia sizes and constructs its water infrastructure based upon the number of EDUs it needs to deliver water to its customers. Tr. 22.

13. Less than 1% of Columbia’s residential customers have 1” meters. Tr. 19; CWC Exh. 5.

14. Columbia’s billing practices correlates a 1-inch meter with 2.5 EDUs. Tr. 37; CWC Exh. 6 at 6.

15. Approximately 99% of Columbia’s residential customers have a 5/8-inch or 3/4-inch meter. CWC Exh. 5.

16. Columbia’s billing practices correlates both 5/8-inch and 3/4-inch meters with a single EDU. CWC Exh. 8.

17. The current monthly PennVEST surcharge is \$9.69 per EDU.  
CWC Exh. 8.

18. Respondent charges Mr. Henry \$24.23 monthly for the PennVEST surcharge. Tr. 11; CWC Exh. 4.

19. The PennVEST monthly surcharge amount of \$9.69 per EDU is determined as follows:

$$PVS = (PI/EDU's)/12$$

PVS = Prospective PennVEST Monthly Surcharge per EDU

PI = Annual Principal and Interest per PennVEST Loans 80180 and 85182

EDU's = Current Equivalent Dwelling Units as determined from the Company's Billing Records

CWC Exh. 8 at 6.

*Monthly customer charge*

20. Respondent's Tariff specifies that monthly customer charges are determined by meter size. CWC Exh. 8 at 4.

21. The monthly customer charge for a residential 1-inch meter is \$28.38. Tr. 30; CWC Exh. 8.

## DISCUSSION

### *Legal standards*

#### *Burden of proof, generally*

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). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). 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 (1990). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701.

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 a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982). Moreover, 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. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is

insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960).

Thus, to prevail, Mr. Henry, as the Complainant, has the burden of proof. This means that Mr. Henry must present facts which support his claims and show that the utility violated the Code, a regulation or Commission order by a preponderance of the evidence.

*Section 1501 of the Code*

Section 1501 of the Public Utility Code mandates that public utilities, such as Columbia Water Company, shall render reasonable service:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay . . . .

66 Pa.C.S. § 1501.

“Service” is broadly defined in Section 102 of the Code:

“Service.” 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 . . . .in the performance of their duties under this part to their patrons, employees, other public utilities, and the public . . . .

66 Pa.C.S. § 102.

In order for the Commission to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the Commission does not have the authority, when acting on a customer's complaint, to require any action by the utility. *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984). 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).

*Existing tariff considered prima facie reasonable*

Consumers' rights include the ability to file a complaint and be heard when they believe an existing tariff is unreasonable, as applied to them. *Petty v. Cmty. Utils. of Pa., Inc.* Docket No. C-2024-3052590 at 10 (Order and Opinion entered June 6, 2025) (*Petty*). While existing tariff rates are considered *prima facie* reasonable, existing tariffs may still be challenged. *Id.* To overcome the impact of an existing tariff provision, a complainant must prove the facts and circumstances have changed so drastically that the application of the tariff provision to the complainant renders it unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (*Shenango*) (noting that the burden to contest an existing tariff is a heavy one).

*Civil penalty*

The Commission previously adopted standards to be applied to determine the amount of the civil penalty in slamming cases. *Rosi v. Bell-Atlantic-Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Mar. 16, 2000). The Commission also considered these standards when evaluating settlement agreements in slamming

cases. *Pa. Pub. Util. Comm'n v. PEPCO Energy Services*, Docket No. M-00001432 (Order entered Nov. 9, 2000). Subsequently, the Commission determined all violations of the Code and the Commission's regulations would be subject to review under the standards set forth in *Rosi. Pa. Pub. Util. Comm'n v. NCIC Operator Serv.*, Docket No. M-00001440 (Order entered Dec. 21, 2000).

The Commission conducts this review to determine the appropriate penalty to be applied for all types of violations for all categories of public utilities. The factors in *Rosi* are generic in nature and can be applied in all cases. The nature of the violation (intentional or negligent), its impact (customers affected and duration), the extent of cooperation by the regulated entity, and the utility's compliance history are, *inter alia*, examples of factors the Commission reviews for all types of violations for all types of utilities. Subsequent to the decision in *Rosi*, the Commission promulgated the standard in *Rosi* and it is set forth in the Commission's regulations:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at

issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201(c).

### *Analysis*

Complainant, Mr. Henry, resides at 4119 Marietta Avenue, Mount Joy, PA 17552 (Service Address). The Service Address is a single-family dwelling occupied by two people. Tr. 8-10. Respondent, Columbia Water Company, provides residential water service to the Service Address. The water meter installed at the Service Address is a 1-inch cast iron meter. Tr. 16-17; CWC Exhs. 1-2. In Respondent's billing practices,

two of the charges – the monthly PennVEST surcharge and the monthly customer charge – on Complainant’s water bills are based on Complainant’s meter size. Tr. 21-23; CWC Exh. 4.

*PennVEST surcharge*

Columbia’s PennVEST monthly surcharge is calculated in part based on EDUs. Tr. 21-22; CWC Exh. 8 at 6. An EDU is a standard unit used across the water industry. Tr. 22. According to Columbia’s witness, Columbia sizes and constructs its water infrastructure based upon the number of EDUs it needs to deliver to its customers. Tr. 22. Columbia correlates a residential 1-inch meter with 2.5 EDUs. Tr. 37. The current PennVEST charge is \$9.69 per EDU. CWC Exh. 7. Thus, Mr. Henry’s PennVEST surcharge is \$24.23.<sup>2</sup> Tr. 31; CWC Exh. 4.

Columbia’s current PennVEST surcharge rate became effective on March 1, 2023, pursuant to Commission Order. *The Columbia Water Company Supplement No. 117 To Tariff – Water Pa. P.U.C. No. 7*, Docket No. R-2022-3036936 (Order entered Feb. 9, 2023) (Supplement No. 117 Tariff Order).<sup>3</sup> However, unlike an existing tariff presumed *prima facie* reasonable, the Order stated, in pertinent part:

Investigation and analysis of this proposed tariff supplement and the supporting data indicates that the proposed tariff supplement does not appear to be unlawful, unjust, unreasonable, or contrary to the public interest. As such, the proposed tariff supplement, should be permitted to become effective on the proposed March 1, 2023, effective date. However, **this does not constitute a**

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<sup>2</sup> \$9.69/EDU x 2.5 EDUs = \$24.23.

<sup>3</sup> Of importance, it appears that Columbia did not update its customer-facing tariff supplement at the second page, marked with an effective date of April 11, 2022. See [Columbia-Water-Company-FULL-TARIFF-TARIFF-Suppl.-132-DSIC-effective-August-1-2025.pdf](#) (last visited Sept. 29, 2025).

**determination that this tariff supplement is lawful, just, and reasonable;** rather, this is a determination that suspension or further investigation does not appear to be warranted at this time.

Supplement No. 117 Tariff Order at 5 (emphasis added).

Thus, without the Commission's determination that this tariff supplement is lawful, just, and reasonable, an analysis must be undertaken herein regarding Mr. Henry's PennVEST surcharge.

Respondent's tariff supplement provides:

The PennVEST surcharge amount of \$9.69 per EDU is determined as follows:

$$PVS = (PI/EDU's)/12$$

PVS = Prospective PennVEST Monthly Surcharge per EDU

PI = Annual Principal and Interest per PennVEST Loans 80180 and 85182

EDU's = Current Equivalent Dwelling Units **as determined from the Company's Billing Records**

*Columbia Water Company Supplement No. 117 To Tariff – Water Pa. P.U.C. No. 7* (emphasis added).

In contrast to the plain language of the tariff supplement, at the hearing on direct examination, Columbia's witness asserted the PennVEST surcharge is based on meter size and further elaborated, "the PennVEST charge is based on meter size, which is tied to EDUs." Tr. 21. Columbia's witness provided no testimony or evidence that

Columbia calculates Mr. Henry's monthly PennVEST surcharge on "Current Equivalent Dwelling Units as determined from the Company's Billing Records." See Tr. *generally*.

At the hearing, when Mr. Henry asked on cross-examination where the multiplier of 2.5 came from and why Respondent is multiplying \$9.69 times 2.5, Respondent's witness testified:

So there's an association called the American Water Works Association. It's an association for the water industry and they are the folks that identify those types of multipliers. So we would have submitted that when we filed our first PennVEST application, surcharge application. So those are established based upon what the industry sees across the nation for usages based on that information.

Tr. 37.

Given the plain language of the tariff supplement, wherein an EDU is determined from the Company's Billing Records, testimony by Columbia's witness introduced evidence that Columbia instead relies on the American Water Works Association to provide a determination of EDUs. Columbia's witness also pointed to the Commission's Order, which provides in relevant part:

Columbia Water's effective tariff contains the PVS formula, which defines that PVS is equal to PI divided by 12 months. The value for PI is determined pursuant to the amortization schedule for PennVEST loan obligations, and the value for EDUs is determined by applying meter equivalency ratios to the size and number of water meters for customers in Columbia Water's Columbia Rate District.

Supplement No. 117 Tariff Order at 2.

There are at least three issues with the tariff supplement's plain language verses Columbia's in-practice EDU determination discrepancy.

First, an EDU represents the average demand created by a single-family dwelling unit on public utilities, particularly with respect to water and waste systems. Tr. 22.

Second, Mr. Henry's single-family dwelling by very definition of an EDU, represents one EDU.

Third, Columbia provided no Service Address usage history to suggest Mr. Henry creates more than the average demand of a single-family dwelling unit on Columbia's water system. Instead, the billing history entered into the record by the Company showed the Service Address created an average residential demand, or the equivalency of one EDU. *See* CWC Exh. 6. A review of the Company's billing records failed to show any evidence that 2.5 EDUs should be used to calculate Mr. Henry's monthly PennVEST surcharge. *Id.*

Yet, Columbia calculated the monthly PennVEST surcharge for Mr. Henry, a residential customer of a single-family dwelling, by multiplying \$9.69/EDU times 2.5 EDUs. By doing so, I find Columbia charged a rate different than its tariff supplement provides and thus provided unreasonable service in violation of Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501.

#### *Refund due to Complainant*

As relief in his Complaint, Mr. Henry requested a refund of previously charged fees if the Commission determined that the fees were unjustified. Complaint ¶ 5. Thus, having found that Columbia erred when calculating the PennVEST surcharge for

Mr. Henry's residential account, I find that a refund is due.

The Code at Section 1312 provides:

**§ 1312. Refunds.**

**(a) General rule.**--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

66 Pa.C.S. § 1312.

Here, Complainant is owed the difference of the PennVEST surcharge calculation at 2.5 equivalent dwelling units and the PennVEST surcharge calculation at 1 equivalent dwelling unit, with the lookback period commencing on March 1, 2023, through the most recent bill<sup>4</sup> Respondent charged Complainant \$24.23 instead of \$9.69,

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<sup>4</sup> By way of example, presuming Respondent began charging Complainant \$24.23 on March 1, 2023, through October 1, 2025, Respondent charged Complainant incorrectly for 32 months, thus  $\$24.23 \times 32 \text{ months} = \$775.36$ , minus what Complainant

together with interest at the legal rate. 66 Pa.C.S. § 1312.

*Monthly customer charge*

The monthly residential customer charge for a 1-inch meter is \$28.38. Tr. 30; CWC Exhs. 4, 8. Respondent's Tariff specifies that monthly customer charges are determined by meter size. CWC Exh. 8 at 4. The Commission authorized Respondent's current rates, including the monthly customer charges, in Columbia's most recent base rate case. *Pa. Pub. Util. Comm'n v. Columbia Water Co.*, Docket No. R-2023-3040258 (Order and Opinion entered Jan. 18, 2024).

Existing tariff rates charged by public utilities enjoy a presumption of *prima facie* reasonableness. *Petty*. Here, Columbia demonstrated its monthly customer charge for a 1" meter is \$28.38. Columbia demonstrated Mr. Henry's residential water meter is a 1" meter. Columbia demonstrated Mr. Henry's monthly customer charge is therefore \$28.38.

Customers may challenge existing tariff rates by proving that facts and circumstances have changed so drastically that the application of the tariff provision to the complainant renders it unreasonable. *Shenango*. Mr. Henry did not introduce evidence to rebut Columbia's *prima facie* evidence as to the reasonableness of its monthly customer charge. Thus, I find that Columbia's monthly customer charge, as applied to Mr. Henry, is not unreasonable.

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owed,  $\$9.69 \times 32 \text{ months} = \$310.08$ , generates a refund of  $\$465.28 + \text{legal interest}$ . This same calculation method shall be applied to all of Columbia's customers subjected to a PennVEST surcharge rate based on anything other than the tariff supplement language, i.e. EDUs based upon the Company's billing records. 66 Pa.C.S. § 1312.

*Civil penalty*

Respondent denied it violated the Public Utility Code, the Commission's regulations or orders, but the evidence presented at the hearing shows Respondent failed to provide Mr. Henry reasonable service by billing Mr. Henry a PennVEST surcharge calculated differently than the plain language of Respondent's tariff supplement. Respondent further failed to provide Mr. Henry reasonable service when the Company investigated his complaint and merely pointed to its tariff supplement as conclusory evidence. Because I find that Columbia provided unreasonable service, a civil penalty may be warranted.

Upon review of the *Rosi* standards, I conclude:

As to Factor #1, Respondent committed a technical error.

As to Factor #2, no personal injury or property damaged occurred.

As to Factor #3, I deem the conduct at issue negligent.

As to Factor #4, the Respondent provided no evidence that it made efforts to modify internal practices or procedures.

As to Factor #5, the known number of customers affected here is one, the Complainant, with the potential of customers affected nearing 100, according to Respondent's records of residential customers with a 1" meter. The violation began on March 1, 2023, pursuant to the Commission's order implementing the tariff supplement.

As to Factor #6, neither party presented evidence regarding the Respondent's compliance history.

As to Factor #7, the Respondent cooperated during this proceeding.

As to Factor #8, I find that a civil penalty, under the particular facts of this case and the small size of this utility, is not necessary to deter future violations.

As to Factor #9, neither party presented evidence regarding past Commission decisions upholding penalties for similar violations.

As to Factor #10, neither party presented evidence regarding other relevant factors.

Given that this Decision directs the Respondent to issue a refund to Complainant and all other patrons similarly situated, I find that no civil penalty is warranted here.

### *Conclusion*

Therefore, I find Mr. Henry, as to the PennVEST surcharge calculation, met his burden of proving Columbia violated the Public Utility Code and the Company's Tariff in its calculation of Complainant's PennVEST surcharge. I find that Mr. Henry, as to the monthly customer service charge, did not meet his burden of proving by a preponderance of the evidence that Columbia violated the Public Utility Code, the Commission's regulations or outstanding order. Accordingly, Mr. Henry's Formal Complaint is sustained, in part, and dismissed, in part.

### CONCLUSIONS OF LAW

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

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

5. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. 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 a 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).

7. 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).

8. To overcome the impact of an existing tariff provision, a complainant must prove the facts and circumstances have changed so drastically that the application of the tariff provision to the complainant renders it unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

9. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

10. "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).

11. Complainant met his burden of proof as to the PennVEST surcharge calculation. 66 Pa.C.S. § 332(a).

12. Complainant failed to produce evidence necessary to meet his burden of proof as to the monthly customer charge. 66 Pa.C.S. § 332(a).

13. "If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was

extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.” 66 Pa.C.S. § 1312(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Justin Henry filed at *Justin Henry v. Columbia Water Company* at Docket No. F-2025-3053872 is sustained, in part, and dismissed, in part.

2. That the Formal Complaint of Justin Henry filed at *Justin Henry v. Columbia Water Company* at Docket No. F-2025-3053872 is sustained as to the PennVEST surcharge calculation.

3. That the Formal Complaint of Justin Henry filed at *Justin Henry v. Columbia Water Company* at Docket No. F-2025-3053872 is dismissed as to the monthly customer service charge.

4. That Columbia Water Company is hereby directed to calculate Complainant’s refund plus interest at the legal rate, in accordance with this Decision and Section 1312 of the Public Utility Code, 66 Pa.C.S. § 1312.

5. That Columbia Water Company is hereby directed to calculate all patrons subject to the same rate of the public utility a refund plus interest at the legal rate, in accordance with Section 1312 of the Public Utility Code, 66 Pa.C.S. § 1312.

6. That Columbia Water Company is hereby directed to file a status update at this docket to confirm: (1) the PennVEST surcharge refund calculations for Complainant and all patrons subject to the same rate; and (2) issuance of calculated refunds. The status report shall be filed within sixty (60) days of the issuance of a Commission Final Order.

7. That Docket No. F-2025-3053872 be marked as closed thirty (30) days after Columbia Water Company files a status update as indicated in Ordering Paragraph 6, above.

Date: October 8, 2025

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/s/  
Emily A. Farren  
Administrative Law Judge