

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Constantine Giovetsis

v.

Philadelphia Gas Works

C-2010-2215800

**INITIAL DECISION**

Before  
Christopher P. Pell  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

On December 17, 2010, Constantine Giovetsis (complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the complainant checked off the box indicating "other" and wrote in the following statement:

I am trying to get gas service brought to my house. The PGW representative Mr. Nasir called me and told me there would be a cost of \$10,000 to bring the service to my house. There is service at three doors down the street. I believe this is and (sic) outrageous amount and I am on a limited income Social Security. Any help in this matter would be gladly appreciated. Thank you.

As relief, the complainant indicated that he wants PGW to bring a gas line to his house free of charge.

On January 6, 2011, respondent filed an Answer admitting that the cost to the complainant to install a new main and service to the complainant's address is \$9,198. PGW further

stated that it fairly applied its Tariff Regulation 10.1 when it calculated the cost to complainant to have gas service installed at the service address.

By Hearing Notice dated September 29, 2011, a hearing was scheduled for November 28, 2011, at 10:00 a.m. and the matter was assigned to me.

The hearing convened as scheduled on November 28, 2011. The complainant appeared pro se and testified. Complainant did not offer any exhibits into the record. Respondent appeared and was represented by Laureto Farinas, Esquire, who presented the testimony of Annemarie Cromley. Respondent offered six exhibits (PGW Exhs. 1 through 6) during the hearing, which were all admitted into the record.

The record in this case consists of a 41-page transcript and seven exhibits. The record in this case closed on December 13, 2011, when I received the transcript of the hearing.

#### FINDINGS OF FACT

1. The complainant in this case is Constantine Giovetsis. He resides at 530 Simms Street, Philadelphia, PA 19116 (service address).
2. The respondent in this proceeding is Philadelphia Gas Works.
3. The complainant purchased the service address on May 13, 2009. Tr. 13, 35; PGW Exh. 4.
4. When the complainant purchased the service address in May 2009, he was aware that it did not have gas service. Tr. 13.
5. On June 8, 2010, the complainant contacted PGW to request gas service for the service address. Tr. 34; PGW Exh. 1.

6. The nearest gas main to the service address is 155 feet away. Tr. 26; PGW Exh. 6.

7. In order to bring gas service to the service address, PGW would have to extend the existing main 155 feet and then install 85 feet of service piping from the extended main to the service address. Tr. 27; PGW Exhs. 2 and 6.

8. Rule 10, Extensions and Rights-of-Way, of respondent's Gas Service Tariff – Pa P.U.C. No. 2 governs extensions for permanent customers such as the one requested by the complainant. PGW Exh. 3.

9. Rule 10, Extensions and Rights-of-Way, of respondent's Gas Service Tariff – Pa P.U.C. No. 2 at 10.1.A provides that the respondent will furnish and install at no cost to the customer, delivery main and service-delivery pipe of an amount up to five times the anticipated annual delivery charge, as set forth in its gas service tariff, and the customer shall pay a customer contribution for any costs in excess of this allowance. Tr. 31; PGW Exh. 3.

10. Rule 10, Extensions and Rights-of-Way, of respondent's Gas Service Tariff – Pa. P.U.C. No. 2 at 10.6 provides that a prorated portion of a customer or developer's contributions may, pursuant to Section 10.1, be refunded by the company without interest, if within three years of the commencement date of the original customer or developer's service agreement, new customer loads are added to such new facilities. Tr. 32; PGW Exh. 3.

11. At the time the complainant requested gas service, the price per foot to extend a 2" gas main was \$57.50. PGW calculated the cost to extend the main to the service address to be \$8,912.50 (155 feet x \$57.50 = \$8,912.50). Tr. 29; PGW Exh. 2.

12. At the time the complainant requested gas service, the price per foot to install a 1&1/4" service line was \$40.90. PGW calculated the cost to extend the service line from the extended main to the service address to be \$3,476.50 (85 feet x \$40.90 = \$3,476.50). Tr. 29-30; PGW Exh. 2.

13. PGW determined the total cost to extend gas service to the service address to be \$12,389.00. Tr. 30, PGW Exh. 2.

14. In accordance with the allowance provision set out in Rule 10, Extensions and Rights-of-Way, of respondent's Gas Service Tariff – Pa P.U.C. No. 2 at 10.1.A, the respondent determined that the complainant was entitled to an allowance of \$3,192.00. Tr. 30-31; PGW Exh. 2.

15. In accordance with Rule 10, Extensions and Rights-of-Way, of respondent's Gas Service Tariff – Pa P.U.C. No. 2 at 10.1.A, respondent reduced the total cost to extend gas service to the service address by the \$3,192.00 allowance, determining the complainant responsible to pay approximately \$9,198.00 to extend gas service to the service address. Tr. 30, PGW Exh. 2.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Public Utility 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 and Western Ry. v. Pa. Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor*

*Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

In his Complaint and at the hearing, the complainant challenged PGW's decision to charge him nearly \$10,000.00 to extend gas service from an existing gas main to his home. The complainant felt that the price PGW wants to charge him to extend gas service to his home is excessive. Moreover, the complainant believes it to be unfair that another home-owner might benefit from this extension without incurring the same charges.

Regarding the extension of facilities, Commission regulations provide that "[e]ach public utility shall file with the Commission, as part of its tariff, a rule setting forth the conditions under which facilities will be extended to supply service to an applicant within all, or designated portions, of its service area." 52 Pa. Code § 59.27.

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Telephone Co. of Pennsylvania*, 32 Pa.Cmmw. 319, 379 A.2d 339(1977); *Brockway Glass Co. v. PA Public Utility Comm'n*, 63 Pa.Cmmw. 238, 437 A.2d 1067(1981); *Pennsylvania Electric Co. v. PA Public Utility Comm'n*, 663 A.2d 281(Pa.Cmmw, 1995).

Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. PA Public Utility Comm'n*, 140 Pa.Cmmw. 599, 594 A.2d 816(1991); *alloc. den.*, 529 Pa. 670, 605 A.2d 335(1992), 66 Pa.C.S.A. §316.

Rule 10 of respondent's Gas Service Tariff – Pa P.U.C. No. 2 enjoys all of these legal presumptions.

In relevant part, respondent's Rule 10 provides:

## 10. Extensions and Rights-of-Way

### 10.1 EXTENSIONS OR ENLARGEMENTS FOR PERMANENT CUSTOMERS

10.1.A. Residential Gas Service – Upon written application, and under normal conditions of construction and installation, the Company will extend its main and service for permanent residential Customers or developers within its service territory provided the requested extension will not adversely affect the availability or deliverability of Gas to existing Customers. **The Company will furnish and install at no cost to the Customer or developer, delivery main and service-delivery pipe of an amount up to five times the anticipated annual Delivery Charge, as set forth in this Gas Service Tariff, and the Customer or developer shall pay a customer contribution for any costs in excess of this allowance.** Included in the calculation of such costs may be an appropriate allowance for transmission and distribution main extensions required to deliver the Gas supply to local areas where Gas Service is needed. Permanent residential Customers or developers making use of new facilities which required a customer contribution from an original Customer or developer within the previous three years shall be deemed to have made application at the same time as the original contributing Customer or developer and shall pay a pro rata customer contribution for such facilities to be determined by the Company.

10.6 EXTENSION OR ENLARGEMENT REFUNDS. **A pro-rata portion of a Customer or developer's contributions made pursuant to Section 10.1, above, may be refunded by the Company without interest if, within three years of the commencement date of the original Customer or developer's service agreement, new Customer loads are added to such new facilities.** For purposes of making refund computations, the original new loads will be deemed to have been installed at the same time. Refunds will be paid only to a contributing Customer or developer, and the original contribution shall be the maximum aggregate refund. Upon receipt of a written request by a Customer or developer made no earlier than the end of the third year following the date of the original agreement for new Gas Service, PGW will: (a) review its records to determine if a refund is due the Customer or the developer for additional Customers that attached to the facilities paid for by the Customer or the developer within three years after the execution date of the agreement for new Gas

Service, and (b) within 120 days of receipt of such request, (i) make payment to the Customer or developer of any refund due and (ii) provide the Customer or developer with documentation substantiating the refund calculations and identifying the attached loads for which the Customer or developer was credited.

In the present case, PGW determined that the cost to extend the gas main 155 feet to meet the service address would be \$8,912.50 (155 feet x \$57.50 = \$8,912.50), and the cost to extend the service line from the extended main to the service address would cost \$3,476.50 (85 feet x \$40.90 = \$3,476.50) for a total cost of \$12,389.00. Additionally, and in accordance with Rule 10.1.A of respondent's Gas Service Tariff – Pa P.U.C. No. 2, respondent reduced the total cost to extend gas service to the service address by an allowance of \$3,192.00, leaving the complainant responsible to pay approximately \$9,198.00 to extend gas service to the service address. Clearly, the price PGW determined that the complainant must pay to extend gas service to the service address complies with Rule 10.1.A. of PGW's Gas Service Tariff – Pa P.U.C. No. 2.

Although the complainant expressed an additional concern that another homeowner might benefit, at no cost, from his decision to extend service to his home, Rule 10.6 of respondent's Gas Service Tariff – Pa P.U.C. No. 2 provides for a refund of a pro rata portion of the payment he makes to extend service to his home if a new customer load is added to these new facilities within three years of his service agreement. Clearly, respondent's Tariff addresses the complainant's concern.

The complainant failed to bear his burden of proof in this case. He has not demonstrated that Rule 10.1.A. of respondent's Gas Service Tariff – Pa P.U.C. No. 2 is unreasonable, nor has he offered anything to demonstrate that PGW's calculations of the cost to extend gas service to the service address were not in compliance with its tariff.

Accordingly, the Complaint is denied in its entirety.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding.
2. Pursuant to 66 Pa. C.S.A. § 332(a), the burden of proof in this proceeding is upon the complainant.
3. Complainants must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. Such a showing must be by a preponderance of the evidence.
4. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.
5. Commission regulations require each public utility to file with the Commission, as part of its tariff, a rule setting forth the conditions under which facilities will be extended to supply service to an applicant within all, or designated portions, of its service area. 52 Pa. Code § 59.27.
6. A public utility's Commission-approved tariff has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Telephone Co. of Pennsylvania*, 32 Pa. Commw. 319, 379 A.2d 339(1977); *Brockway Glass Co. v. PA Public Utility Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067(1981); *Pennsylvania Electric Co. v. PA Public Utility Comm'n*, 663 A.2d 281(Pa. Commw, 1995).
7. Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. PA Public Utility Comm'n*, 140 Pa. Commw. 599, 594 A.2d 816(1991); *alloc. den.*, 529 Pa. 670, 605 A.2d 335(1992), 66 Pa.C.S.A. §316.
8. Complainant presented no evidence that Rule 10.1.A. of respondent's Gas Service Tariff – Pa P.U.C. No. 2 is unreasonable.

9. The complainant failed to prove by a preponderance of the evidence that the respondent improperly determined the cost to extend gas service to the service address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Constantine Giovetsis against Philadelphia Gas Works at Docket No. C-2010-2215800 is denied; and
2. That the record at Docket No. C-2010-2215800 be marked closed.

Date: February 17, 2012

  
\_\_\_\_\_  
Christopher P. Pell  
Administrative Law Judge