

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathy Boone

v.

Philadelphia Gas Works

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C-2015-2521142

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This Decision dismisses a complaint filed against a natural gas company by a customer who claims that actions of the company caused water to enter her basement resulting in approximately \$3,000 worth of damage to her home. This Decision finds that the company has effectively rebutted the evidence presented by the complainant. As a result, the complaint must be dismissed because the complainant has failed to demonstrate by a preponderance of the evidence that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved company tariff with regard to the service provided to the complainant.

HISTORY OF THE PROCEEDING

On December 23, 2015, Kathy Boone filed a formal complaint with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or the Company), Docket Number C-2015-2521142. In her complaint, Ms. Boone averred that “PGW is responsible for damage to property totaling in excess of \$3,000.” Ms. Boone further indicated that she would like the Company to pay for the damage she believed it caused to her home by digging up the street and

pavement. Ms. Boone added: "I spoke to a PGW representative and they refused to accept responsibility for the damage to my home and property."

On January 19, 2016, PGW filed an answer to Ms. Boone's complaint. In its answer, PGW admitted or denied the various averments Ms. Boone made in her complaint, including denying that the Company is responsible for damage at Ms. Boone's property. PGW provided additional information regarding the service provided to Ms. Boone. PGW argued that it was not responsible for the damage. PGW also provided information regarding an informal complaint Ms. Boone filed against the Company with the Commission's Bureau of Consumer Services (BCS), case number 3353007. PGW attached to its answer a copy of the BCS decision dated, December 12, 2015, and concluded by requesting that the Commission dismiss Ms. Boone's complaint.

Also on January 19, 2016, PGW filed preliminary objections in response to Ms. Boone's complaint. In the preliminary objections, PGW argued that the Commission is without jurisdiction to grant Ms. Boone's request for damages as a form of relief and that the complaint, therefore, includes impertinent matter. PGW requested that Ms. Boone's request for compensation be stricken. Ms. Boone did not file an answer to PGW's preliminary objections.

On February 26, 2016, a Telephonic Hearing Notice was issued setting an Initial Telephonic Hearing for this matter for Friday, April 8, 2016 and assigning me as the Presiding Officer.

On March 3, 2016, PGW's preliminary objections were granted striking Ms. Boone's request for money damages from the complaint. All other issues raised in the formal complaint were allowed to proceed to the hearing scheduled for April 8, 2016. A prehearing order dated March 3, 2016 was issued setting forth various rules that will govern that hearing.

The hearing convened on April 8, 2016, as scheduled. Ms. Boone appeared *pro se*. Laureto Farinas, Esquire appeared on behalf of the Company. Prior to the hearing, the parties engaged in settlement discussions. During those discussions, it was determined that the hearing should be continued for thirty days to allow for additional settlement discussions. On April 11,

2016, an order granting the continuance was issued formally continuing the hearing for thirty days and instructing the parties to provide a status report at that time.

By email dated May 9, 2016, counsel for PGW indicated that settlement discussions were not successful and that a further hearing should be scheduled. As a result, a Telephonic Hearing Notice was issued setting a further telephonic hearing for Tuesday, June 28, 2016. Prehearing Order #2 was issued on May 13, 2016 memorializing the establishment of the further telephonic hearing and informing the parties that all aspects of the Prehearing Order issued on March 3, 2016 remain in effect.

The further hearing convened on June 28, 2016, as scheduled. Ms. Boone appeared *pro se* and presented oral testimony. Laureto Farinas, Esquire appeared on behalf of the Company. Mr. Farinas presented two witnesses who testified on behalf of the Company and sponsored four exhibits that were admitted into the record. A transcript of 51 pages was created. The record in this proceeding closed on July 21, 2016 when the transcript was submitted to the Commission.

Ms. Boone's complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Kathy Boone.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 849 East Westmoreland St., Philadelphia, PA.
4. Ms. Boone sustained approximately \$3,000 in damage as a result of water entering her basement when a pipe broke. Tr. 14-15.
5. Jessica Glace is a customer review officer for PGW and investigates informal and formal complaints filed with the Commission by customers. Tr. 24.

6. PGW Exhibit Number 1 is a five page exhibit entitled Contacts for Account pertaining to Ms. Boone's account. Tr. 24-29; PGW Exh. No. 1.

7. PGW Exhibit Number 3 is a 16-page print out of an email string and related documents regarding the service provided at Ms. Boone's home. Tr. 25-29; PGW Exh. No. 3.

8. PGW Exhibit Number 4 is a one-page electronic representation of the Commission's Bureau of Consumer Services decision on Ms. Boone's informal complaint closed on December 14, 2015. Tr. 25-29; PGW Exh. No. 4.

9. PGW Exhibit Number 5 comprises four photographs of excavation near Ms. Boone's home. Tr. 25-29; PGW Exh. No. 5.

10. On October 10, 2014, Ms. Boone called PGW to complain about her gas line outside of her home not being fixed correctly. Tr. 29-30; PGW Exh. No. 1.

11. Ms. Boone indicated that she complained to the water company about having water in her basement and the water company advised Ms. Boone to call PGW. Tr. 30; PGW Exh. No. 1.

12. A PGW technician visited Ms. Boone's home on October 10, 2014 and found a strong smell of sewage in the basement. Tr. 30; PGW Exh. No. 1.

13. Ms. Boone complained to PGW on October 22, 2014 that she believed PGW caused water to enter her basement through her curb trap causing mold and flooding. Tr. 30; PGW Exh. No. 1.

14. On June 5, 2015, Ms. Boone filed an informal complaint at BCS. Tr. 30-31; PGW Exh. No. 1.

15. In response to Ms. Boone's informal complaint, BCS determined that PGW was not responsible for the clogged sewer lines and dismissed the complaint. Tr. 31, 33; PGW Exh. Nos. 1 and 4.

16. On November 12, 2014, Joseph Leva met with a plumber at Ms. Boone's home and found that the sewer trap was closed at Ms. Boone's home. Tr. 32-33; PGW Exh. No. 3.

17. Joseph Leva is a supervisor of distribution maintenance for PGW and has been employed by PGW for 14 years. Tr. 37.

18. Mr. Leva is responsible for the street crews who make excavations on city streets and is an investigator for the risk management department when customer complaints arise. Tr. 37.

19. The first picture in PGW Exhibit Number 5 shows the PGW service line as identified by a yellow line painted on the sidewalk that is over six feet away from where excavation occurred to repair Ms. Boone's sewer trap. Tr. 38; PGW Exh. No. 5.

20. PGW did not damage the sewer line because PGW excavated six feet away from where the sewer line was damaged. Tr. 38.

21. The second picture in PGW Exhibit Number 5 shows the trench that was excavated by the plumber to repair Ms. Boone's sewer line to measure how far down the sewer line was. Tr. 39; PGW Exh. No. 5.

22. A trench was dug seven feet deep to repair the curb trap. Tr. 40; PGW Exh. No. 5.

23. The third picture in PGW Exhibit Number 5 is a closer view of the measurement taken of how deep the trench is to show more clearly that it is seven feet deep. Tr. 41; PGW Exh. No. 5.

24. The fourth picture in PGW Exhibit Number 5 shows a significant clog in the curb trap. Tr. 41; PGW Exh. No. 5.

25. PGW was not the cause of the water entering Ms. Boone's basement. Tr. 42; PGW Exh. No. 3.

26. The sidewalk in front of Ms. Boone's home is broken up near the gas line because PGW replaced Ms. Boone's service line. Tr. 44-45; PGW Exh. No. 5.

DISCUSSION

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). 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. PUC 196 (1990). "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, 364 Pa. 54, 70 A.2d 854 (1950). 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. In this proceeding, Ms. Boone seeks to have PGW held responsible for damage to her property when water entered her basement. Ms. Boone, therefore, has the burden of proof in this proceeding.

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.Cmwlt. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

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 & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

In this case, Ms. Boone argued that water has entered her basement causing approximately \$3,000 in damage as a result of actions by PGW when repairing her gas service line. Ms. Boone testified that the water department informed her that PGW was responsible for the damage. In response, PGW presented the testimony of two witnesses. In particular, PGW witness Leva testified regarding various pictures showing construction work performed outside Ms. Boone's home. Mr. Leva testified that the work performed by PGW did not cause water to enter Ms. Boone's basement.

Ms. Boone's complaint will be dismissed because she has failed to carry her burden to demonstrate by a preponderance of the evidence that PGW in any way violated the Public Utility Code, any Commission order or regulation or any Commission-approved tariff of the Company.

The evidence presented by Ms. Boone in support of her position that PGW is responsible for the damage caused to her home is her testimony that the water company told her it was PGW's fault. *See e.g.*, Tr. 14-15. Ms. Boone believed that her sewer pipe shifted and became damaged when PGW installed a new gas pipe. Tr. 21. Ms. Boone believes that, as a result of that damage, water entered her basement. Ms. Boone did not present any additional evidence in the form of a report from the water company, for example, or any other evidence, that would support her position that PGW in some way was responsible for the damage to her home.

In contrast, PGW presented evidence demonstrating that it is not responsible for the damage to Ms. Boone's home. Most significantly, on November 12, 2014, PGW witness Leva investigated Ms. Boone's complaint on behalf of PGW's risk management department. Tr. 37. As part of that investigation, Mr. Leva took four pictures of Ms. Boone's property that were admitted

into the record. The first picture shows that PGW's service line for Ms. Boone's property is several feet away from the sewer trap that ruptured and caused water to enter Ms. Boone's basement. Tr. 38; PGW Exh. No. 5. The second and third pictures that Mr. Leva discussed show that the excavation work that caused the sewer trap to rupture was seven feet deep. Tr. 39-41; PGW Exh. No. 5. Mr. Leva testified that this is significant because PGW's gas line is only three feet deep and PGW would only be required to dig only four feet deep in order to install a new gas line. Tr. 40. As a result, Mr. Leva testified that these pictures show that, in addition to the water line that ruptured being deeper than PGW's line, it is also approximately six feet away. Tr. 40; *see also*, PGW Exh. No. 3. Mr. Leva concluded that PGW's actions did not cause Ms. Boone's sewer line to break and water to enter Ms. Boone's basement. I find Mr. Leva's testimony to be credible.

As a result, Ms. Boone has failed to carry her burden to demonstrate that PGW in any way violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the Company. Ms. Boone argued that PGW's actions caused water to enter her basement yet, other than her own testimony of what the water department told her, she provided no evidence in support of her position. Ms. Boone's testimony of what the water department told her is hearsay and, even though not objected to during the hearing, cannot be the basis of a finding of fact because there is no corroborating competent evidence. *See, Burks v. Department of Public Welfare*, 48 Pa. Cmwlth. 6, 408 A.2d 912 (1979). In contrast, PGW has effectively rebutted Ms. Boone's testimony with the testimony of Mr. Leva and the pictures he sponsored that were admitted into the record. I agree that it is unlikely that PGW's actions caused water to enter Ms. Boone's basement since PGW's excavation work was approximately six feet away and three feet less deep than the pipe that broke causing water to enter her basement. There is no evidence demonstrating that, for example, the earth that far away could have shifted sufficiently to cause damage to the sewer pipe that resulted in water entering Ms. Boone's basement.

As noted above, if a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. *Milkie, supra*. 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. *Id.* PGW has effectively rebutted Ms. Boone's evidence but Ms. Boone has failed to rebut PGW's evidence in this case and, therefore, her complaint must be dismissed. It is unclear from the record how water entered Ms.

Boone's basement that caused damage to her home. It is clear, however, that Ms. Boone has failed to demonstrate by a preponderance of the evidence that PGW's actions in any way violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the Company with regard to the service provided to her.

CONCLUSIONS OF LAW

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

2. 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).

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. PUC 196 (1990).

4. "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, 364 Pa. 54, 70 A.2d 854 (1950).

5. 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.

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

8. "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 & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwltth 23, 480 A.2d 382 (1984).

9. Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of fact, in an administrative hearing, if it is corroborated by competent evidence in the record, but a finding of fact based solely on hearsay will not stand. Burks v. Department of Public Welfare, 48 Pa. Cmwltth. 6, 408 A.2d 912 (1979).

10. Ms. Boone has failed to satisfy her burden of proof in this proceeding by a preponderance of the evidence to demonstrate that PGW in any way violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Kathy Boone against Philadelphia Gas Works at Docket Number C-2015-2521142 dated December 23, 2015 is hereby dismissed.

2. That this matter be marked closed.

Date: August 29, 2016

_____/s/
Joel H. Cheskis
Administrative Law Judge