

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vidya Lerio	:	
	:	
v.	:	C-2017-2602557
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses the Complaint filed by Vidya Lerio (Complainant) against UGI Utilities, Inc. (UGI) which alleged failure on the part of UGI to provide safe and adequate service as required by the Public Utility Code at 66 Pa. C.S. § 1501. The Complaint is dismissed because the Complainant did not prove, by a preponderance of the evidence, any violation of the Code or the rules and regulations of the Commission.

HISTORY OF PROCEEDING

On May 5, 2017, Complainant filed a formal Complaint against UGI alleging failure on the part of UGI to provide safe and adequate service.

On May 24, 2017, UGI filed an Answer to the Complaint denying any failure to provide safe and adequate service to Complainant.

On June 5, 2017, a hearing Notice was issued setting July 14, 2017, as the date for a telephonic hearing in this case.

On June 19, 2017, counsel for UGI requested a continuance of that hearing. The request was not opposed by Complainant, and the matter was continued until September 7, 2017.

On September 7, 2017, a telephonic hearing took place. Complainant appeared on her own behalf, and UGI was represented by Larry R. Crayne, Esquire. Complainant offered testimony, but as UGI began to present its case, Complainant stated that she had not received a copy of UGI's proposed exhibits. The hearing was, therefore, continued so that UGI could re-serve its proposed exhibits on Complainant.

On October 24, 2017, the hearing re-convened pursuant to Notice issued September 14, 2017. Complainant again appeared on her own behalf and presented fifteen proposed exhibits, two of which were received into evidence: Exhibit C-17 and Exhibit C-18, both photographs taken by Complainant at the service address.¹ UGI presented the testimony of Amy Winn, a Senior Compliance Representative with UGI and Jeffrey Hewitt, Senior Supervisor of Operations for UGI. UGI presented five exhibits that were received into evidence: Exhibit R-1, a Statement of Account; Exhibit R-2, a Customer Assistance Program summary; Exhibit R-3, a copy of 52 Pa. Code § 59.34; Exhibit R-4, a copy of 49 CFR § 192.723; and, Exhibit R-5, an Initial Decision in the case of *Lerio v. UGI Utilities, Inc.*, Docket No. C-2016-2557167 (September 20, 2016).²

The record in this case consists of 93 pages of transcript in total, as well as the exhibits referenced above which were received into the record. The record closed on November 8, 2017, with the filing of the hearing transcript from the October 24, 2017 hearing.

This matter is now ready for adjudication.

¹ Counsel for UGI did not object to Complainant's limited testimony for the purpose of presenting proposed exhibits.

² The undersigned presided in that case in the capacity of a Special Agent in the absence of the Special Agent originally assigned to that case. The Initial Decision dismissed the Complaint of Ms. Lerio seeking a Commission-ordered payment agreement.

FINDINGS OF FACT

1. Vidya Lerio is the Complainant in this case, residing at 852 Egge Street, Allentown, Pennsylvania, the service address referenced in the Complaint.
2. UGI Utilities, Inc., is a Commission jurisdictional natural gas supplier that provides natural gas service to the Complainant.
3. UGI surveyed the gas service lines of Complainant's residence as part of a regular survey schedule on August 23, 2016, and on April 25, 2013. Tr. 10/24/17 at 24, 42; Exhibit R-3.
4. UGI tried to obtain access to the meter inside Complainant's residence in July 2016, and again in May 2017, but was unsuccessful on both occasions. Tr. 10/24/17 at 26.
5. On May 4, 2017, UGI dispatched an employee to Complainant's residence to shut off gas service for non-payment. Tr. 9/7/17 at 6.
6. In May 2017, the curb valve associated with Complainant's service line was found to be difficult to access because the box in which it was contained had shifted. Tr. 10/24/17 at 39.
7. Access to the curb valve is necessary to shut off service, though there are other ways to shut off service. Tr. at 10/24/17 at 39, 41-42.
8. Curb valves are situated in underground boxes that shift and can fill with debris, dirt and water. Tr. 10/24/17 at 40.
9. The underground box containing the curb valve is made of plastic with a metal lid. Tr. 10/24/17 at 46.

10. The inability to access the curb valve at Complainant's service address did not present a hazard to the customer or to the public. Tr. 10/24/17 at 41.

11. Servicing the curb valve was not a necessity nor an emergency situation, nor was the curb valve leaking. Tr. 10/24/17 at 44.

12. Complainant's service line also includes a flow limiter, which is a device designed to cut off gas in the event of a leak. Tr. 10/24/17 at 41.

13. While replacing Complainant's curb valve in May 2017, UGI employees also moved her meter outside of the residence. Tr. 10/24/17 at 43.

14. Complainant did not object at that time to UGI's work. Tr. 10/24/17 at 43.

15. When Complainant's meter was moved outside, some excavation took place, but any remaining restoration of the site was due by November 30, 2017. Tr. 10/24/17 at 48-49.

16. Restoration was not accomplished within the ninety-day time period described to Complainant. Tr. 10/24/17 at 58.

DISCUSSION

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S.A. § 332(a). To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (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*, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

As Complainant stated in her formal Complaint and at several points during the hearing, this case is not about Complainant's account or a billing dispute. Tr. 10/24/17 at 34, 59, 61.³ In this case, Complainant alleged that UGI rendered unsafe and inadequate service relative to detection and replacement of an allegedly "broken" gas flow control device known as a curb valve. Thus, Complainant alleged that UGI had violated the Public Utility Code at Section 1501, which states, in pertinent part:

§ 1501. Character of service and facilities.

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. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Complainant based her case on her misunderstanding that the curb valve at her residence was broken, and that it posed a hazard. Complainant argued that "but for," UGI

³ Part of UGI's case presentation was based on a "after this, therefore caused by this," theory that a prior billing case at Docket No. C-2016-2557167 is linked to the present Complaint. Such linkage was not established, but it is not relevant to this quality of service Complaint.

coming to disconnect her service, the “broken” valve might never have been detected or repaired. Tr. at 62.

However, Complainant never established that the curb valve was broken or that any hazard existed. What was established is that the plastic and metal subsurface box containing the curb valve had moved, as is not uncommon, but that did not create a hazard, and UGI corrected that problem. Complainant did not present evidence to support her claim at hearing that the situation put her family, first-responders or anyone else in danger, nor did she present evidence to refute the testimony of UGI’s witness, Jeffrey Hewitt, that there was no danger. Complainant’s unsupported opinion on this technical matter does not constitute evidence. Mere opinion, without more, is insufficient to meet a Complainant’s burden. *Richard Kirby v. PPL Electric Utilities Corporation*, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing *PA Bureau of Corrections v. City of Pittsburgh*, 532 A. 2d 12 (1987)). I accept as credible the testimony of UGI’s witness, Jeffrey Hewitt, Senior Supervisor of Operations for UGI, that although the box containing the curb valve had shifted, that presented no danger. It made access to the curb valve difficult, and UGI corrected that problem. Mr. Hewitt testified that the curb valve, itself, was not broken.

The Complainant failed to prove by a preponderance of the evidence that UGI violated a provision of the Public Utility Code or a rule or regulation of the Commission. Therefore, her Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. § 701.
2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

