

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Diane Lozosky	:	
	:	
v.	:	C-2017-2625428
	:	
UGI Utilities, Inc. – Gas Division	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal complaint of a customer of a gas distribution company. The customer failed to demonstrate that the utility had failed to adequately repair her gas meter installation or that her gas service was unsafe or unreliable.

HISTORY OF THE PROCEEDINGS

On September 15, 2017, Diane Lozosky (Complainant) filed a formal complaint against UGI Utilities, Inc. – Gas Division (UGI) contending that UGI had improperly installed a meter on her newly built home which resulted in the riser sinking. As relief, she requests that UGI check and make sure that her service line is intact and undamaged. By answer filed on October 2, 2017, UGI denies that the Complainant’s meter was installed improperly. UGI further avers that on June 29, 2016, a field team met with the Complainant at her home and discovered that the ground around the home had settled. Accordingly, UGI states that it excavated around the riser, inspected the line in, bracket, riser, and meter, rebuilt the meter installation, and painted all piping. (Answer at ¶ 7).

By hearing notice dated November 9, 2017, the Commission assigned this case to me and scheduled a hearing on December 21, 2017. I served my customary prehearing order on November 14, 2017, which set forth the procedures for the conduct of the hearing. By letter dated December 19, 2017, UGI requested a continuance in order to finalize settlement discussions with the Complainant. By interim order dated December 20, 2017, the request for a continuance was granted. The hearing was rescheduled for Monday, January 29, 2018.

The hearing convened as scheduled. The Complainant appeared and represented herself. UGI was represented by Jorge Pereira, Esquire. The parties agreed to participate in the settlement process, and a discussion was held off the record. A potential resolution was discussed. The parties agreed that if the Complainant was not satisfied with the resolution, a further hearing would be scheduled. The parties agreed to a hearing day of March 5, 2018. The agreement was memorialized in an interim order dated February 1, 2018.

On January 30, 2018, the Complainant contacted the Office of Administrative Law Judge in Pittsburgh to report that she wanted to proceed with the hearing on the agreed upon day. On January 31, 2018, a hearing notice was served which scheduled a further call-in telephonic hearing for Monday, March 5, 2018.

The hearing convened as scheduled. The Complainant appeared and was self-represented. She testified on her own behalf and sponsored one exhibit, which was marked as Ex. C-1 and admitted into the record. UGI appeared and was represented by Jorge Pereira, Esquire. The testimony of one witness, Michael Cawley, was offered. UGI offered three exhibits which were marked as Exs. R-1 to 3, and were admitted into the record. The hearing produced a transcript of 77 pages. Following the receipt of the transcript, the record was closed by interim order dated March 29, 2018.

FINDINGS OF FACT

1. The Complainant, Diane Lozosky, resides at 502 East Main Street, Emmaus, Pennsylvania, and receives residential gas service from UGI. (N.T. 18-19)
2. UGI is a jurisdictional public utility.
3. On June 9, 2016, the Complainant paid UGI to install a gas line to her new house that was being built. (N.T. 18)
4. The gas line was installed by the end of September or beginning of October 2016. (N.T. 18)
5. Skoda Contracting, a subcontractor for UGI, installed the Complainant's meter. (N.T. 41)
6. In May 2017, the Complainant's builder told her that the pipes on the meter installation were no longer straight and advised her to call UGI. (N.T. 19, 27; Ex. C-1)
7. The Complainant called UGI on May 9, 2017, May 10, 2017 and May 12, 2017. (N.T. 19)
8. On May 16, 2017, Mike Cawley¹ of UGI contacted the Complainant and arranged to inspect her meter and gas line. (N.T. 19)
9. Michael L. Cawley is a construction and maintenance supervisor for UGI. (N.T. 39)

¹ The transcript misspelled Mr. Cawley's name as Michael "Pawley."

10. Mr. Cawley has held his position as a construction and maintenance supervisor for 17 years. (N.T. 41)
11. The pipes leading to the meter had sunk during the winter of 2016-2017. (N.T. 18; Ex. C-1)
12. On June 30, 2017, Mr. Cawley and Todd Cook of Skoda Contracting visited the Complainant to repair the meter installation. (N.T. 21-22; 44)
13. The riser had dropped in the bracket of the installation with the settling of the ground around the Complainant's foundation. (N.T. 45)
14. At the Complainant's request, Mr. Cawley and Mr. Cook dug down next to the meter riser 12-18 inches and concluded that there had been no damage to the riser or the coupling. (N.T. 21-22; 35; 48; 61 *see* Ex. R-1)
15. The Complainant viewed the excavation and took a picture. (N.T. 22)
16. After taking the picture, the Complainant left the repair site and did not watch Mr. Cawley and Mr. Cook repair the meter installation. (N.T. 36)
17. To repair the meter installation, UGI tightened the mounting bracket up on the riser and rebuilt the meter installation so that it would be level with the ground. (N.T. 45-46)
18. Rebuilding the meter installation involved adding another piece of pipe above the valve so that it would tie in straight with the pipe coming out of the wall of the Complainant's house. (N.T. 46; 64)
19. Following the rebuilding of the meter, UGI leak tested the meter installation for leaks and sub-tested all of the fittings. (N.T. 50)

20. There were no signs of kinking, which would indicate that the line had been damaged. (N.T. 55)

21. UGI painted the meter installation, including the newly installed pipes and the existing pipes. (N.T. 50)

22. On June 30, 2017, the Complainant reported to Mr. Cawley that she was satisfied with the repaired meter installation. (N.T. 50; *see also* N.T. 22, 37)

23. The next day, after examining a picture that she took of the June 30, 2017 excavation of the meter riser, the Complainant became concerned that the piping below ground had been damaged when the meter sank and again contacted UGI. (N.T. 22-23; 38; *see* Ex. C-1 (center photograph))

24. The Complainant was satisfied with the pipes that are visible above-ground and with the paint on the meter. (N.T. 23; 37)

25. The equipment that runs from the Complainant's meter and attaches to the gas line includes a compression fitting that is "pull-out proof" so that the line cannot be pulled out accidentally. (N.T. 51; Ex R-3)

26. The line and fittings are also designed to withstand settling and temperature changes. (N.T. 52-54; Exs. R-1, R-2)

27. The Complainant has not smelled gas since the June 30, 2017 repair to her meter. (N.T. 35)

DISCUSSION

The Complainant contends that she is not satisfied with the repair to her meter installation and is concerned that her gas line may leak at some point in the future. Section 701

of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.² A person seeking affirmative relief from the Commission has the burden of proof.³

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, she has the burden of proof. This means that she must establish a material fact by a preponderance of the evidence, and must show that the company has violated the Public Utility Code or Commission orders and regulations.⁴

Section 1501 of the Code,⁵ 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. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.⁶

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.⁷ Further, the Commission has stated that a utility is not mandated to furnish perfect service:

² 66 Pa.C.S. § 701.

³ 66 Pa.C.S. § 332(a).

⁴ *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

⁵ 66 Pa.C.S. § 1501.

⁶ 66 Pa.C.S. § 1505.

⁷ *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (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.⁸

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.⁹ This is the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities.¹⁰

The Complainant testified that she is worried about the repair to her meter installation because the piping may have been damaged when it sank into the ground when the earth settled around the foundation of her newly built house during the winter. She only offered her own testimony and observations. She did not testify that she had seen any broken piping or that she had smelled gas after the meter installation was repaired, which might indicate a leak. While her concern is understandable, it falls short of proving that UGI failed to adequately repair her meter.

Conversely, UGI, through the credible testimony of Mike Cawley, demonstrated that it responded to the Complainant's complaint promptly and performed a thorough repair of the meter installation. Mr. Cawley also explained that the elements of the meter installation are engineered to withstand the settling of the ground such as the situation which occurred at the Complainant's residence. There is no evidence that UGI could have anticipated that the ground around the Complainant's house would settle to such a degree at the time the meter was initially installed. He also went to great lengths to answer the Complainant's questions and dug a hole at her request to show her that the piping leading into the meter had not been damaged. He also completed a leak test following the repair of the meter installation.

⁸ *Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).

⁹ *Thurby v. West Penn Power*, C-2011-2254048 (Order April 4, 2013); *Bertsch v. PPL Electric Utilities Corp.*, C-2011-2251784 (Final Order April 2, 2012); *Scherich v. Verizon Pennsylvania Inc.*, PUC Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010).

¹⁰ *Id.*

In sum, the Complainant failed to prove that UGI's facilities or repairs to those facilities were unsafe or inadequate. UGI responded to the Complainant promptly and repaired the meter and answered the Complainant's questions. Therefore, the Complainant failed to prove that UGI failed to provide her with reasonable customer service.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.
3. A utility is required to render reasonable service, but not perfect service. 66 Pa.C.S. § 1501; *Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).
4. The Complainant failed to sustain her burden of proving that UGI's facilities were unsafe or that UGI failed to render reasonable service. 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Diane Lozosky at Docket C-2017-2625428 is dismissed.
2. That the Secretary shall mark the docket closed.

Date: June 1, 2018

/s/
Mary D. Long
Administrative Law Judge