

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MaryLee Warren	:	
	:	C-2018-3001083
v.	:	
	:	C-2018-3001067
Suez Water Pennsylvania, Inc.	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision dismisses two consolidated complaints filed by a consumer against a water and wastewater company alleging that there are incorrect charges on her bill and that she is having a reliability, safety or quality problem with her utility service. The complaints are dismissed because the respondent does not provide service to the complainant.

**HISTORY OF THE PROCEEDING**

On March 13, 2018, MaryLee Warren filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Suez Water Pennsylvania, Inc. (Suez). On the section of the complaint regarding type of utility service, Ms. Warren checked both water and wastewater/sewer. As a result, the Commission’s Secretary’s Bureau docketed the complaint at both C-2018-3001083 and an identical copy of the complaint at C-2018-3001067. In the complaint, Ms. Warren noted that there are incorrect charges on her bill and that she is having a reliability and a safety or quality problem with her utility service. Ms. Warren also attached to her complaint a “statement of fact” wherein she provided additional detail

regarding her complaint, along with other supporting materials. Ms. Warren listed several items she would like as relief in response to her complaint.

On April 27, 2018, Suez filed an answer to Ms. Warren's complaint at docket number C-2018-3001083. In its answer, Suez admitted or denied the various averments Ms. Warren made in her complaint. In particular, Suez denied that it is a utility providing water or wastewater service to Ms. Warren. Suez stated, among other things, that Ms. Warren is not a Suez customer. Suez concluded its answer by requesting that Ms. Warren's complaint be dismissed.

Also on April 27, 2018, Suez filed a motion for judgment on the pleadings. In its motion, which was accompanied by a notice to plead, Suez averred that Ms. Warren resides within a mobile home park known as Harborton Place Estates that is apparently owned and/or operated by Kodiak Property Management with water and wastewater service billed to Ms. Warren by ABT Water Management, Inc. (ABT). Suez further argued that Ms. Warren provided no documentation demonstrating that she is a customer of Suez. Suez argued that any difficulties with water and wastewater service are matters to be addressed by Ms. Warren with Harborton Place Estates and/or ABT. Suez concluded that it is entitled to judgment as a matter of law dismissing the complaint because Ms. Warren is not a customer of Suez for either water or wastewater service.

On May 30, 2018, a motion judge assignment notice was issued by the Commission informing the parties that I had been assigned as the presiding officer responsible to resolve any issues which may arise during the preliminary phase of this proceeding.

On June 19, 2018, Suez filed a letter indicating that the complaint docketed at C-2018-3001067 is the same complaint as the complaint at docket C-2018-3001083 and requesting that both complaints be addressed in resolution of the motion filed on April 27, 2018 at docket C-2018-3001083.

Ms. Warren did not file an answer to either the motion for judgment on the pleadings or the June 19, 2018 letter.

By order dated June 22, 2018, Suez's motion for judgment on the pleadings was denied, the two complaints were formally consolidated, and the consolidated complaints were set for a hearing. As discussed further below, it was noted that the standard for granting a motion for judgment on the pleadings is very high and will only be granted where the record clearly shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. It was determined that Suez had failed to meet that standard with regard to Ms. Warren's complaints and that a hearing should be held regarding the complaints so that Ms. Warren could present her case orally and not have her complaint dismissed on a preliminary basis.

On June 29, 2018, a call-in telephone hearing notice was issued establishing an initial call-in telephonic hearing for this matter for Friday, August 24, 2018 at 10:00 a.m. and assigning me as the presiding officer. On July 5, 2018, a prehearing order was issued setting forth various rules that would govern that hearing.

On July 17, 2018, Suez submitted an amended answer to the complaints. Again, Suez admitted or denied the various averments in the complaints and requested that both consolidated complaints be dismissed.

The hearing in this matter convened on August 24, 2018, as scheduled. Ms. Warren appeared pro se and presented oral testimony and one exhibit that was admitted in to the record. Thomas Niesen, Esquire, appeared on behalf of Suez and presented one witness who sponsored five exhibits that were admitted in to the record. A transcript of 54 pages was created.

The record in this case closed on September 27, 2018 when the transcript was submitted to the Commission. For the reasons discussed below, Ms. Warren's complaint will be dismissed.

## FINDINGS OF FACT

1. The Complainant in this case is MaryLee Warren.
2. The Respondent in this case is Suez Water Pennsylvania, Inc.
3. The service address is 419 Caravan Court, Middletown, PA.
4. Warren Exhibit Number 1 is a compilation of 1) a letter dated May 19, 2018 from Ms. Warren to Kodiak Professional [sic] Management asking a number of questions, 2) a page entitled “Drinking Water Warning Failure of a Filtration or Disinfection Process,” 3) a letter dated July 24, 2018 from Ms. Warren to Betty Bear, manager of Harborton Place Estates, asking a number of questions, and 4) the cover page and two signature pages of a 148-page document entitled “Municipal Water and Wastewater Utility System Concession and Lease Agreement” dated September 29, 2014. Tr. 11-14; Warren Exh. No. 1.
5. Ms. Warren has lived in Harborton Place Estates, a mobile home community, for over 20 years. Tr. 19, 22.
6. Suez Exhibit Number 1 is a copy of a bill from ABT to Ms. Warren for the service period of December 1, 2017 to December 31, 2017 for a total of \$256.27. Tr. 21-22; Suez Exh. No. 1.
7. Ms. Warren wrote Suez Water Pennsylvania on her complaint as the respondent because she lives in the Borough of Middletown. Tr. 22.
8. The name Suez Water does not appear anywhere on Suez Exhibit Number 1. Tr. 23; Suez Exh. No. 1.

9. Suez Exhibit Number 2 is a letter dated February 6, 2018 from Ms. Warren to the Public Utility Commission regarding “MaryLee Warren versus ABT Water Management.” Tr. 26; Suez Exh. No. 2.

10. The Commission’s response to Ms. Warren’s February 6, 2018 letter stated that the Commission does have jurisdiction over Suez but does not have jurisdiction over the Borough of Middletown. Tr. 28-29.

11. Ms. Warren paid her sewer and water bill with her lot rent by making a check out to Harborton Place Estates and giving it to Rita Grove, the property manager. Tr. 31-32.

12. Scott Bear is the maintenance person for Harborton Place Estates and reads Ms. Warren’s water meter at her residence and has repaired a broken pipe. Tr. 32.

13. Ms. Warren has never asked Harborton Place Estates to test the water at her residence. Tr. 34.

14. ABT charged Ms. Warren \$14.82 for her water service and \$31.46 for her sewer service in the December 2017 bill. Tr. 35; Suez Exh. No. 1.

15. Judith McCoy-Jordan is employed by Suez as a mid-Atlantic customer service manager and oversees the customer service functions for Suez. Tr. 39.

16. Ms. Warren is not a customer of Suez. Tr. 40.

17. Nowhere in the Suez billing system is there the service address of 419 Caravan Court. Tr. 40.

18. Suez does not provide service to 419 Caravan Court. Tr. 40-41.

19. Suez does not provide water or wastewater service in the Borough of Middletown. Tr. 41-43.

20. Suez Exhibit Number 3 is the tariff page for Suez Water Pennsylvania, Inc. showing the territories served by the company. Tr. 41; Suez Exh. No. 3.

21. Suez Exhibit Number 4 is the tariff page for Suez Wastewater Pennsylvania, Inc. showing the territories served by the company. Tr. 42-43; Suez Exh. No. 4.

22. ABT is not owned or operated by Suez. Tr. 43.

23. Suez does not provide water or sewer service to Harborton Place Estates or own any facilities in Harborton Place Estates. Tr. 44.

24. Suez Exhibit Number 5 is a water quality report for Suez Middletown Operations issued June 2018. Tr. 47; Suez 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. Warren complained that there are incorrect charges on her bill and that she is having a reliability, safety or quality problem with her water and wastewater service. Ms. Warren, 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.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

In addition, on appeal, 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).

At the hearing, Ms. Warren testified regarding her experience trying to get answers to various questions related to her utility service. Ms. Warren testified that she wanted to know the rate that Suez was charging residents and who is responsible for the treatment of the water and wastewater. Tr. 7. Ms. Warren also discussed the service she had received from Kodiak Property Management, ABT and the Borough of Middletown. Tr. 10-11. Ms. Warren also presented various documents that were admitted in to the record. This included:

- 1) a letter dated May 19, 2018 from Ms. Warren to Kodiak Professional [sic] Management asking a number of questions,
- 2) a page entitled "Drinking Water Warning Failure of a Filtration or Disinfection Process,"
- 3) a letter dated July 24, 2018 from Ms. Warren to Betty Bear, manager of Harborton Place Estates, asking a number of questions, and

- 4) the cover page and two signature pages of a 148-page document entitled “Municipal Water and Wastewater Utility System Concession and Lease Agreement” dated September 29, 2014.

Tr. 11-14; Warren Exh. No. 1. Ms. Warren also answered several questions asked by counsel for Suez during cross-examination.

In response, Suez provided the testimony of Judith McCoy-Jordan, a mid-Atlantic customer service manager for the company. Ms. McCoy-Jordan testified that Ms. Warren is not a customer of Suez and that Suez does not provide service to the service address or the Harborton Place Estates. Tr. 40-41. Ms. McCoy-Jordan also testified regarding various pages of the Suez tariff that demonstrated that the company is not authorized by the Commission to provide service to Ms. Warren. Tr. 41-44. These tariff pages were admitted in to the record as Suez Exhibits 3 and 4.

Ms. Warren’s complaint will be dismissed because she failed to demonstrate that Suez violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

In her complaint, Ms. Warren attached a statement of fact wherein she explained that Kodiak Property Management purchased the Harborton Place Estates in January 2017. Ms. Warren also questioned in the attachment why the maintenance person for Harborton Place Estates was digging a trench to repair a broken water pipe and not Suez. Ms. Warren made several other allegations involving Suez and also questioned whether the water was safe. Ms. Warren attached several documents to her complaint, including various letters she wrote in unsuccessful attempts to get answers to her questions. Based on these averments, the motion for judgment on the pleadings filed by Suez was denied. As noted above, the standard for granting a motion for judgment on the pleadings is very high and Suez failed to satisfy that standard. Ms. Warren was, therefore, afforded an opportunity to have a hearing to demonstrate whether Suez violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company, and not have her complaint dismissed on a preliminary basis. Ms. Warren was advised that to sustain her burden of proof at a hearing, she must demonstrate by a



preponderance of the evidence that Suez has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company and that all orders of the Commission must be supported by substantial evidence. Ms. Warren has failed to satisfy that standard and, as a result, her complaint must be dismissed.

Record evidence demonstrates that Ms. Warren is billed for her water and wastewater service from ABT. As demonstrated by Suez Exhibit Number 1, Ms. Warren's bill from ABT for the period of December 1, 2017 to December 31, 2017, ABT billed Ms. Warren \$14.82 for water and \$31.46 for sewer. Tr. 35; Suez Exh. No. 1. This is the same bill Ms. Warren attached to her complaint. Nowhere on the bill from ABT for water and wastewater service is Suez identified. It is unclear why Ms. Warren identified Suez as the respondent when completing her complaint. In response to questioning from counsel for Suez, Ms. Warren was unable to explain why she listed Suez on her complaint as the respondent and not ABT. Ms. Warren was given an opportunity to demonstrate at a hearing that Suez is the proper respondent but failed to do so.

Furthermore, none of the documents that Ms. Warren provided in support of her complaint demonstrate that Suez has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Warren Exh. No. 1.

For example, page 2 of Warren Exhibit Number 1, the May 19, 2018 letter from Ms. Warren to Kodiak Professional [sic] Management, simply asks various questions regarding service provided to Harborton Place Estates, such as the number of meters in the mobile home park, how often is the water tested, who is responsible for the maintenance, etc. but no answers are provided.<sup>1</sup> Page 3 of Warren Exhibit Number 1 is a boil-water advisory issued by Suez-Middletown Water but it does not show that Ms. Warren's home is affected. Page 4 of Warren Exhibit Number 1 is a July 24, 2018 letter from Ms. Warren to Betty Bear, manager of Harborton Place Estate, asking similar questions as Ms. Warren asked Kodiak Professional Management but, again, does not provide any answers to those questions. Finally, pages 5, 6 and 7 of Warren Exhibit Number 1 is the front cover and signature pages of a municipal lease agreement but there

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<sup>1</sup> The first page of Warren Exhibit Number 1 is the cover letter accompanying the remaining documents.

is no substance of what that agreement contains included in the exhibit as no other pages to the agreement are attached. In fact, Ms. Warren testified during the hearing that the agreement “does not mention Suez at all in it.” Tr. 13. Overall, none of these documents show that Suez violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.

Nor does anything else Ms. Warren testified about make such a demonstration. For example, Ms. Warren testified that she has hard water. Tr. 14. Ms. Warren also testified that she had a washcloth that changed colors after collecting drops of water from a faucet that Ms. Warren left running to prevent her pipes from freezing in the winter. Tr. 14. Ms. Warren questioned why the washcloth changed colors yet presented no evidence that there was a quality problem with her water. Such assertion, without more, does not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d. 12 (Pa. 1987).

In contrast, the evidence presented by Suez outweighs the evidence presented by Ms. Warren. Most notably, Ms. McCoy-Jordan testified that 1) Ms. Warren is not a customer of Suez, 2) Ms. Warren’s address does not appear in the Suez billing system and 3) Suez does not provide service to the service address. Tr. 40-41. Ms. McCoy-Jordan’s testimony was supported by the Suez tariffs that show that Suez does not have authority from the Commission to provide water or wastewater service to Ms. Warren’s address. Tr. 41-42; Suez Exh. Nos. 3 and 4. As Ms. McCoy-Jordan testified:

Q. To your knowledge, what is Harborton Place or Harborton Place Estates?

A. The only thing that I can look at is based on the complaint that was – formal complaint that was filed. It looks as though that Harborton Place or Harborton Estates is a mobile home park that Ms. Warren actually resides in.

Q. And does Suez Water Pennsylvania provide water or sewer service to the Harborton Place or Harborton Place Estates?

A. No, we do not.

Q. Does Suez Water Pennsylvania own water or sewer facilities in Harborton Place or Harborton Place Estates?

A. No, we do not.

Tr. 44. Ms. Warren did not refute this evidence presented by the company. Such evidence outweighs the evidence presented by Ms. Warren.

In conclusion, as noted above, 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. In this case, Suez has effectively rebutted the evidence presented by Ms. Warren and Ms. Warren has failed to effectively respond to the evidence presented by Suez. It is unclear why Ms. Warren believes Suez is the proper respondent in this case but, even after being given an opportunity for a hearing, and not having her case dismissed on a preliminary basis, she has failed to make such a demonstration. Ms. Warren is not a customer of Suez but could consider bringing action against Kodiak Property Management, ABT or Harborton Place Estates. Therefore, Ms. Warren has failed to satisfy her burden to demonstrate that Suez violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Ms. Warren's complaint will be dismissed.

#### 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. On appeal, 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.Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

9. Ms. Warren has failed to satisfy her burden to demonstrate that Suez violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company in any way.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaints filed by MaryLee Warren against Suez Water Pennsylvania, Inc. on March 13, 2018 at docket numbers C-2018-3001083 and C-2018-3001067 are hereby dismissed.
2. That these matters be marked closed.

Date: October 9, 2018

\_\_\_\_\_/s/\_\_\_\_\_  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge