

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Ann Ciarlone	:	C-2018-2643810
	:	C-2018-2643811
v.	:	
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A formal complaint against a gas utility, regarding meter placement, is dismissed because the complainant failed to prove that the utility violated a statute, regulation or order of the Commission.

PROCEDURAL HISTORY

On January 16, 2018, Mary Ann Ciarlone (Complainant) filed two formal complaints against UGI Utilities, Inc. (UGI). The Complainant challenges the placement of gas meters at two of her properties which are located in historic districts in Reading, Pennsylvania. Specifically, she contends that her gas service was terminated for several weeks and that she was “bullied” into accepting an outdoor meter placement. As relief she wants her meters to be placed inside the properties. UGI filed an answer on February 12, 2018. UGI admitted to terminating the Complainant’s gas service because it could not get access to her meter, but otherwise denied

the material allegations in her complaint and denied that UGI failed to respond appropriately to the Complainant's meter relocation request.¹

By hearing notice dated February 15, 2018, the matter was assigned to Administrative Law Judge Benjamin J. Myers and scheduled for a hearing on March 5, 2018. By notice dated February 23, 2018, the matter was re-assigned to me and scheduled for a telephonic prehearing conference on April 20, 2018. I issued a prehearing conference order on February 28, 2018, which directed the parties to be prepared to discuss the manner in which the Complainant's formal complaints should be litigated and what impact if any the ongoing litigation with the Centre Park Historic District and the City of Reading² may have on the claims made by the Complainant.

The prehearing conference convened as scheduled. The Complainant appeared and was self-represented. Mark C. Morrow, Esquire, appeared representing UGI. Following a discussion with the parties it was agreed that these complaints should be scheduled for an evidentiary hearing on July 18, 2018. The parties also agreed to discuss resolution of the complaints in advance of the hearing and to provide a status report regarding the outcome of their discussions. The hearing was formally scheduled by notice dated April 23, 2018.

The hearing convened as scheduled.³ The Complainant appeared and was self-represented. She testified on her own behalf. Three exhibits were admitted into the record on behalf of the Complainant and were marked as Exs. 1, 4-B and 4-C. UGI was represented by Mark C. Morrow, Esquire. UGI offered the testimony of one witness, David M. Stahovich, and offered six exhibits which were admitted into the record.

¹ UGI was initially only served with one complaint at Docket No. C-2018-2643810, relating to Complainant's service address at 827 N. 4th Street. It received a copy of a packet of attachments labelled with Docket No. C-2018-2643811. UGI was later granted leave to file an answer to Docket No. C-2018-2643811, relating to 845 N. 3d Street. That answer was filed on May 3, 2018, and is substantially similar to the answer to the complaint at Docket No. C-2018-2643810. UGI also filed an amended answer to Docket No. C-2018-2643810.

² See Docket Nos. C-2015-2516051 and C-2016-2530475.

³ As directed, UGI filed a status report on July 2, 2018, which explained that the parties had discussed settlement options, but that no agreement had been reached.

Following the receipt of the hearing transcript⁴, the record was closed by interim order dated August 17, 2018. Upon review of the transcript, an error in the transcription was discovered. By interim order dated October 23, 2018, the record was reopened to permit the parties an opportunity to object to a correction of the transcript. No objection was received and the record was re-closed on November 5, 2018.

FINDINGS OF FACT

1. The Complainant is Mary Ann Ciarlone, who resides at N. 5th Street, Reading, Pennsylvania. (N.T. 7)

2. The Respondent, UGI Utilities, Inc., is a jurisdictional public utility.

3. The Complainant owns rental properties located at 845 N. 3d Street and 827 N. 4th Street, Reading, Pennsylvania. (N.T. 7-8)

4. Both properties are located in the Centre Park Historic District in Reading. (N.T. 59)

5. David Stahovich is employed by UGI as a senior operations manager for the Reading area. (N.T. 22)

6. The Complainant's properties are located in an area that is subject to a UGI "betterment project," which involves the replacement of cast iron and bare steel mains. (N.T. 24)

7. As part of the betterment project, high density plastic pipe was inserted into the cast iron mains which permitted UGI to increase the pressure from a low pressure system to a higher pressure system. (N.T. 25)

⁴ The prehearing conference transcript generated a 35-page transcript, numbered 1-35. The July 18, 2018 evidentiary hearing generated a transcript with pages numbered 1-65. Unless otherwise noted, all transcript references refer to the July 18, 2018 hearing transcript.

8. A “service lateral” is the line that runs from the main to a customer’s residence. (N.T. 26)

9. Because of the increased pressure in the main, the service laterals to the Complainant’s buildings also had to be replaced to safely accommodate the increased pressure. (N.T. 26-27)⁵

10. The Complainant received a letter in January 2017, indicating that the Complainant’s gas meter at 845 N. 3d Street would be relocated from inside the building to outside. (Ex. 1)

11. The Complainant was aware that the owners of properties in historic districts could request reconsideration of a proposed relocation of a meter from inside to outside. (N.T. 15)

12. The Complainant sent at least one email to UGI requesting indoor placement of her meters. (N.T. 15)

13. The Complainant met with UGI on August 18, 2017, at the 827 N. 4th Street property. (N.T. 19; 23)

14. The Complainant requested that her meters remain inside the buildings. (N.T. 14)

15. UGI denied her request for her meters to remain inside the buildings. (N.T. 14)

16. On August 18, 2017, the Complainant received letters from UGI which informed her that gas service would be terminated to her two properties unless she granted

⁵ See transcript correction, November 5, 2018 Interim Order.

access to UGI to relocate the meters from inside the buildings to the outside. (N.T. 9; Exs. 4-B, 4-C)

17. Gas service was terminated for three weeks. (N.T. 10)

18. The Complainant's meters ultimately were relocated to the outside of each building. (UGI Exs. 1-5)

DISCUSSION

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.⁶ A person seeking affirmative relief from the Commission has the burden of proof.⁷

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. Specifically, she must show that the company has violated the Public Utility Code or Commission orders and regulations.⁸

The Complainant alleged that UGI "bullied her" into agreeing to outdoor placement of her meters. She contends that because her properties are located in an historic district, she is entitled to indoor placement of her meters. After a careful review of the testimony and exhibits, I conclude that the Complainant failed to prove that UGI violated the Public Utility Code.

⁶ 66 Pa.C.S. § 701.

⁷ 66 Pa.C.S. § 332(a).

⁸ *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).

Section 1501 of the Code,⁹ 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.¹⁰

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.¹¹ Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[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.^[12]

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.¹³ 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.¹⁴

The Complainant appears to believe that she is entitled to indoor placement of her meters because her properties are located in a historic district.

⁹ 66 Pa.C.S. § 1501.

¹⁰ 66 Pa.C.S. § 1505.

¹¹ *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlt. 1984).

¹² *Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).

¹³ *Thurby v. West Penn Power*, Docket No. C-2011-2254048 (Order entered April 4, 2013); *Bertsch v. PPL Electric Utilities Corp.*, Docket No. C-2011-2251784 (Final Order entered April 2, 2012); *Scherich v. Verizon Pennsylvania Inc.*, Docket No. C-2008-2061244 (Final Order entered January 28, 2010).

¹⁴ *Thurby, supra*.

Section 59.18 of the Commission's regulations regulates the placement of gas meters. The regulation was completely rewritten by the Commission in order to bring it into conformance with federal gas safety regulations. After two rounds of notice and comment, and consideration of input from a variety of entities, the final regulation became effective on September 13, 2014. Generally, all meters are to be placed outside. However, the regulation permits a utility to place a meter inside when a building is located in an historic district:

(d) *Inside meter locations.*

(1) Inside meter locations shall be considered only when:

...

(ii) A meter is located in a building that meets one of the following criteria:

(A) A building is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the building is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

(B) A building is located within a historic district that is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the historic district is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

(C) A building has been designated as historic under the act of June 13, 1961 (P. L. 282, No. 167) (53 P. S. §§ 8001—8006), known as the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11202) or a municipal home rule charter.

(D) A building is located within a locally designated historic district or is eligible for the listing, or a building is individually designated under a local ordinance as a historic landmark or is eligible for the listing.^[15]

The only evidence presented by the Complainant is (1) that she emailed UGI requesting indoor meter placement; (2) that she met with UGI; and (3) that UGI denied her

¹⁵ 52 Pa.Code § 59.18(d)(1)(ii)(A)-(D).

request to leave the meters at her properties indoors. The denial of her request, by itself, does not mean that UGI failed to consider indoor placement consistent with Section 59.18(d). This regulation does not *require* a utility to place a meter indoors, even in historic districts. The burden of proof is on the Complainant to demonstrate that UGI violated the regulations. There is simply not enough evidence in the record to support that conclusion.

Further, there is no evidence that UGI terminated the Complainant's service in an effort to threaten or intimidate her. The Commission's regulations permit a public utility to terminate service if a customer refuses to permit access to utility facilities or for safety reasons:

§ 59.24. Access to meters and discontinuance of service.

(a) *Access to meters.* Each public utility shall at reasonable times have access to meters, service connections and other property owned by it on the premises of customers, for purposes of maintenance, operation and meter reading. Neglect or refusal on the part of customers to provide reasonable access to their premises for the purposes shall constitute sufficient cause for discontinuance of service.

(b) *Notice of discontinuance.* No public utility shall discontinue service to a customer for violation of its rules and regulations or for nonpayment of bills without a diligent attempt to induce the customer to comply with the rules and regulations, or to pay the bills when due. Service may not be discontinued until after at least 24-hour written notice has been given by the utility that bills are 5 or more days delinquent, or that the violation of rules shall cease. If fraudulent use of gas is detected, or if the regulating or measuring equipment of the utility has been tampered with, or if a dangerous condition is found to exist on the premises of customers, the gas may be shut off without advance notice.^[16]

David Stahovich testified that it would not be safe to energize a gas line when a low pressure line has been replaced with a higher pressure line. When the Complainant refused to permit UGI to access its meters or facilities which were located inside residences, Section 59.24 would permit UGI to discontinue gas service due to the safety issue.

¹⁶ 52 Pa.Code § 59.24.

The Complainant did not introduce any of the notices that she received from UGI nor did she explain the manner in which UGI “threatened” termination of service or used the threat of termination to intimidate the Complainant. Indeed, UGI met with the Complainant to discuss the placement of the meters at her properties. The Complainant’s gas service was only terminated when she refused to grant UGI access to the meters. Gas service was later restored when the meters were moved outside.

In conclusion, the Complainant failed to prove that UGI violated the Public Utility Code, the Commission’s regulations or an order of the Commission. Therefore, her complaint must be dismissed.

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. Public utilities are required to render reasonable customer service. 66 Pa.C.S. § 1501.
4. A public utility may terminate service if a customer refuses to permit access to a meter which creates a safety hazard. 52 Pa.Code § 59.24.
5. A public utility may consider indoor placement of a meter when a building is located in an historic district. 52 Pa.Code § 59.18.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaints of Mary Ann Ciarlone against UGI Utilities, Inc. at Docket Nos. C-2018-2643810 and C-2018-2643811 are dismissed.
2. That the Secretary mark the dockets closed.

Date: January 23, 2019

_____/s/
Mary D. Long
Administrative Law Judge