

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Julie Carnegie, née Ward	:	
	:	
v.	:	F-2018-2644085
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies Julie Carnegie’s formal Complaint against Philadelphia Gas Works at Docket No. F-2018-2644085 because she failed to carry her burden of proving by a preponderance of the evidence that the utility failed to provide her with safe, reasonable and adequate service.

**HISTORY OF THE PROCEEDING**

On January 18, 2018, Julie Carnegie, née Ward (Ms. Carnegie or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) at Docket No. F-2018-2644085 alleging that she had experienced a reliability, safety or quality problem with her gas service at her previous address on Walnut Lane, Philadelphia, PA. As relief, the Complainant requested that PGW’s records reflect the names, dates and observations from the utility’s technicians onsite concerning the dangerous situation detected at the Walnut Lane property. In addition, the

Complainant requested that the same information be made available to the community in the surrounding area, as well as to the local firefighters and the Water Department employees.

The present Complaint is a timely appeal of the informal decision issued by the Commission's Bureau of Consumer Services (BCS) at BCS Case # 3558303.

On February 12, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated February 26, 2018, notified the parties that an initial hearing was scheduled in this matter for April 19, 2018, at 10:00 a.m.

A Prehearing Order was issued on March 12, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

On April 19, 2018, the initial hearing convened as scheduled. Ms. Carnegie appeared *pro se* and testified in support of the Complaint. Laureto Farinas, Esq., appeared on behalf of Respondent. During the April 19, 2018 hearing, Mr. Farinas offered to facilitate a meeting between the Complainant and Gerald Gaydosh, the Field Supervisor who communicated with the Complainant and her husband regarding the dangerous conditions at the Walnut Lane property. Tr. 26-29. The purpose of the meeting was to create a written report of Mr. Gaydosh's visit at the property, his observations regarding the problems detected at the property, and any remedial work done at the site.

The parties met on September 6, 2018 but were unable to resolve the issues raised in the Complaint.

A Hearing Notice dated September 10, 2018, notified the parties that a further in-person hearing was scheduled in this matter for Thursday, October 11, 2018.

Prehearing Order # 2 was issued on September 11, 2018, advising the parties of the date and time of the scheduled further hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The further hearing convened as scheduled on October 11, 2018. The Complainant appeared *pro se* and testified in support of the Complaint. Ms. Carnegie presented the testimony of her husband, Paul Vincent Carnegie, and sponsored two exhibits, which were admitted into the record. Laureto Farinas, Esq., represented the Respondent, and presented the testimony of Gerald Gaydosh, who is an area supervisor with PGW's Field Service Department, and of Tiffany Jones, who is a senior customer review officer for PGW. The Respondent sponsored four exhibits, which were admitted into the record in this case.

The record closed upon receipt of my copy of the hearing transcript on November 11, 2018.

#### FINDINGS OF FACT

1. The Complainant is Julie Carnegie, née Ward, who currently resides with her husband, Paul Vincent Carnegie, at 1617 Murdoch Road, 2<sup>nd</sup> Floor, Philadelphia, PA 19150. Tr. 39.

2. From February 2016 to March 2017, Ms. Carnegie and her husband resided at 7342 East Walnut Lane, 2nd floor, Philadelphia, PA 19138 (Service Address). Tr. 56, 58.

3. The Service Address was a small apartment with two bedrooms, one bathroom and one kitchen. Tr. 56.

4. The Service Address was one of the three apartments in the building. Tr. 58-59.

5. The building where the Service Address was located was poorly insulated with old and ineffective windows. Tr. 69, 80, 82.

6. The only two gas appliances at the Service Address were a gas heater and a gas water heater. Tr. 65.

7. Shortly after PGW turned gas service on at the Service Address in Ms. Carnegie's name in February of 2016, PGW turned it off due to a strong odor related to a hazardous condition in the Complainant's heating system. Tr. 58-61.

8. Complainant and her husband were informed that service would not be turned on until the hazardous condition was removed. Tr. 61.

9. Gas service was turned back on at the Service Address approximately seven days after it was shut off. Tr. 62.

10. After this incident, the Complainant and her husband needed to turn the thermostat all the way to 80 degrees in order to receive any heat in their apartment. Tr. 62.

11. In March or April of 2016, Ms. Carnegie contacted PGW requesting that PGW investigate the heating issue which had caused her gas bills to be very high. Tr. 62.

12. The PGW technician, who visited the Service Address following Ms. Carnegie's call, detected a faulty thermostat and brought it to the attention of Ms. Carnegie's landlord, who replaced the thermostat within 48 hours. Tr. 63.

13. After the landlord replaced the thermostat at the Service Address, Ms. Carnegie and her husband no longer needed to keep the thermostat at 80 degrees in order to have heat in their residence. Tr. 64.

14. Mr. Gaydosh visited the Service Address on August 5, 2016, because a PGW technician had found a small gas leak at the property on PGW's side of the service line. Tr. 98, 117.

15. Because the gas leak was small, PGW made a temporary repair of the line until it could gain access to all the apartments in the building. Tr. 98.

16. Because the gas leak was located on PGW's service line and before the meter, the leakage did not affect the Complainant's billing or that of the other tenants at the property. Tr. 102-103.

17. On August 5, 2016, Mr. Gaydosh left his contact information with Mr. Carnegie to give to the landlord, who would then make the arrangements to give PGW access to all the units for the permanent repair of the line. Tr. 98, 102, 115.

18. In October of 2016, the Complainant's landlord contacted PGW to inform the Respondent that the Walnut Lane property was ready for the permanent repairs; however, PGW was unable to gain the access it needed to make the repairs. Tr. 99-100.

19. In February of 2017, PGW's technicians returned to the property on Walnut Lane and replaced the damaged section of the pipe. *Id.*

20. Following the permanent repair of the gas service line, a hazardous condition was discovered in the building's chimney clean out cap. Tr. 100, 106.

21. PGW did not turn on gas service until the landlord had the chimney clean out cap repaired. Tr. 100.

22. PGW's practices require that its technicians do a meter and piping test every time the utility turns on gas service at a property. Tr. 100.

23. A meter and piping test is essentially a pressure test that shows if there are any leaks on the customer's side of the fuel line. *Id.*

24. PGW's practices require that its technicians check PGW's service line for leaks every time the utility turns on gas service at a property. Tr. 101.

25. If a problem is detected in PGW's service line, the utility will take the necessary measures to ensure that the line is safe before turning the service back on. Tr. 100.

26. If a problem is detected on the customer's side of the fuel line, PGW will mark the problematic areas with a red hazard tag for the customer or his landlord to repair. Tr. 101, 111, 113-14.

27. Service will not be turned on until PGW can ascertain that all necessary repairs have been made. Tr. 101, 111, 113-14.

28. Gas consumption during the colder months is affected by the state of insulation within a property and the thermostat setting. Tr. 101-102, 128.

29. In March of 2017, Ms. Carnegie and her husband moved to their current address on Murdoch Road. Tr. 70-71.

30. The Complainant's new residence is a two-bedroom apartment that is smaller than her previous apartment on Walnut Lane. Tr. 71.

31. The gas appliances in Ms. Carnegie's new residence consist of a gas heater, a gas water heater, a gas stove and oven, a gas washer and a gas dryer. Tr. 71.

32. Despite using more gas appliances, the Complainant's gas bills at the new address are lower than the ones at the Walnut Lane address. Tr. 72, Complainant Exhibit 2.

33. The Complainant's current outstanding balance is \$1,446.00. Tr. 128-30, 137.

34. The Complainant has an active payment arrangement in good standing with the Respondent. *Id.*

### DISCUSSION

In her formal Complaint, Ms. Carnegie alleged that she had experienced a reliability, safety or quality problem with her gas service at her previous address on Walnut Lane, Philadelphia, PA. As relief, the Complainant requested that PGW's records reflect the names, dates and observations from the utility's technicians onsite concerning the dangerous situation detected at the Walnut Lane property. In addition, the Complainant requested that the same information be made available to the community in the surrounding area, as well as to the local firefighters and the Water Department employees.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95, *vacated on other grounds*, 666 A.2d 744 (Pa.Cmwlth. 1995) (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa.

654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

During the evidentiary hearings, Ms. Carnegie argued that PGW failed to provide her with safe and adequate service because: 1) it provided gas service to a building with many safety hazards in place; 2) it failed to notify her of any prior knowledge of the building's history of hazardous conditions (Tr. 73-76); and 3) it caused Ms. Carnegie's heating system to malfunction and her gas bills to be high by having a too short or too small pipe in its service line (Tr. 42, 67-70).

Ms. Carnegie testified that from February 2016 to March 2017, she and her husband resided at 7342 East Walnut Lane, 2nd floor, 19138 (Service Address). Tr. 56, 58. She described the Service Address as a small apartment with two bedrooms, one bathroom and one kitchen. Tr. 56. Ms. Carnegie further explained that the Service Address was one of three apartments in a building that she described as "very old." Tr. 58-59. According to Ms. Carnegie, the building was poorly insulated with old and ineffective windows. Tr. 69, 80. The only two gas appliances at the Service Address were a gas heater and a gas water heater. Tr. 65.

Ms. Carnegie testified that on the day that PGW turned gas service on at the Service Address, the Respondent had to come back and turn it off due to a strong odor related to a hazardous condition in the Complainant's heating system. Tr. 58-61. The Complainant and her husband were informed that service would not be turned on until the hazardous condition was removed. Tr. 61. Gas service was turned back on approximately seven days later. Tr. 62.

Ms. Carnegie testified that, after the initial repairs were made, the Complainant and her husband needed to turn the thermostat all the way to 80 degrees in order to receive any heat in their apartment. Tr. 62. She contacted PGW in March or April of 2016 requesting that the Respondent investigate the heating issue which had caused her gas bills to be very high. Tr. 62. The PGW technician who visited the Service Address detected a faulty thermostat and brought it to the attention of Ms. Carnegie's landlord who replaced the thermostat within 48 hours. Tr. 63. Ms. Carnegie testified that she noticed an improvement soon after the landlord replaced the thermostat in her apartment—she and her husband no longer needed to keep the thermostat at 80 degrees in order to have heat in their residence. Tr. 64.

Ms. Carnegie testified that on another occasion, PGW detected a leak on the utility's side of the service line. According to Ms. Carnegie, Mr. Gaydosh, who inspected the problem at the site, informed Mr. Carnegie that the pipe for the utility's service line was too short or too small to allow for the proper flow of gas through her meter and to their gas appliances. Tr. 26. Later, PGW detected yet another hazardous condition in the building's chimney. Tr. 69. Ms. Carnegie explained that after PGW's detection the landlord had the chimney repaired. Tr. 69-70.

Ms. Carnegie testified that in March of 2017, she and Mr. Carnegie moved to their current address on Murdoch Road. She explained that their new residence is also a two-bedroom apartment, but smaller than the previous one. Tr. 71. In addition, their gas appliances consist of a gas heater, a gas water heater, a gas stove and oven, a gas washer and a gas dryer. Tr. 71. Ms. Carnegie pointed out that despite using more gas appliances now, their gas bills at the new address are lower than the ones at the Walnut Lane address. Tr. 72, Complainant Exhibit 2.

Mr. Carnegie testified in broad terms with regard to his conversation with Mr. Gaydosh concerning the state of PGW's service line. According to Mr. Carnegie, during that conversation, Mr. Gaydosh informed him that the pipe in PGW's service line was too small to properly serve the property. Tr. 89-90. Next, Mr. Carnegie confirmed his wife's testimony with regard to the old age and poor state of the windows in their Walnut Lane apartment. Tr. 82.

He also explained that during the period of time they resided at the Service Address, he suffered from pneumonia which necessitated keeping the thermostat at 80 degrees. Tr. 83.

In response to Mrs. and Mr. Carnegie's testimonies, PGW's witness, Mr. Gaydosh, testified that he visited the Service Address on August 5, 2016, because a PGW technician found a small gas leak at the property on PGW's side of the service line. Tr. 98, 117. Because the leak was located on PGW's side of the service line and before the meter, the leakage did not affect the Complainant's billing or that of the other tenants at the property. Tr. 102-103. In addition, because the leak was small, Mr. Gaydosh decided that a temporary repair could be made to the line until PGW could gain access to all the apartments in the building. Tr. 98. He explained that if permanent repairs were made on August 5, 2016, PGW would have had to shut off gas service to the whole building forcing the tenants to call PGW to light the pilots of their gas appliances. Tr. 98. Before concluding his visit, Mr. Gaydosh left his information with Mr. Carnegie to forward to the landlord who would then make the arrangements to give PGW access to all the units for the permanent repairs. Tr. 98, 102, 115. In October of 2016, the Complainant's landlord contacted PGW to inform the Respondent that the property was ready for the permanent repairs. However, PGW was unable to gain the access it needed to make the repairs. Tr. 99-100. PGW's technicians returned to the property again in February 2017 and replaced the damaged section of the pipe. However, as the gas service was brought back on line, a hazardous condition was discovered in the chimney clean out cap. Tr. 100, 106. Service was left off. Tr. 100.

Mr. Gaydosh testified that PGW's practices require that every time the utility turns on gas service at a property, its technicians must do a meter and piping test, which is essentially a pressure test, that shows if there are any leaks on the customer's side of the fuel line. Tr. 100. In addition, the PGW technicians must check PGW's service line for leaks. Tr. 101. He explained that, if a problem is detected in PGW's service line, the utility will take the necessary measures to ensure that the line is safe before turning the service back on. Tr. 100. If, however, the problem is detected on the customer's side of the fuel line, PGW will mark the problematic areas with a red hazard tag for the customer or his landlord to repair. Tr. 101, 111,

113-14. Service will not be turned on until PGW can ascertain that all necessary repairs have been made. Tr. 101, 111, 113-14.

In his testimony, Mr. Gaydosh denied ever making a statement to Mr. Carnegie that the gas line piping serving the property was too short or too small. Tr. 111. He also denied having promised to Mr. Carnegie that once the leak was repaired, PGW would adjust the Complainant's gas bill. Tr. 111.

Lastly, Mr. Gaydosh explained that gas consumption during the colder months is affected by the state of insulation within a property and the thermostat setting. Tr. 101-102.

Tiffany Jones testified that the highest bill that the Complainant received at the Walnut Lane address was that of January 21, 2017, for \$411.73. Tr. 127, PGW Exhibit 1. She opined that these charges were in line with the gas usage of a PGW customer who, like the Complainant, kept the thermostat at 80 degrees Fahrenheit during the colder months. Tr. 128. She added that the Complainant's current outstanding balance is \$1,446.00 and that she currently had an active payment arrangement in good standing with the Respondent. Tr. 128-30, 137.

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" in conformity with the regulations and orders of the Commission. 66 Pa.C.S.A. § 1501. After carefully reviewing the record in this case, I find that the Complainant failed to carry her burden of proving that the Respondent was remiss in fulfilling this duty. The evidence collected in this matter indicates that PGW appropriately addressed the Complainant's concerns regarding gas service at the Service Address, identified the cause of the problem, red tagged any known hazardous conditions, and terminated gas service at the property until the repairs were made by the landlord. The record is devoid of any indication that PGW allowed for service to continue in a situation where a hazardous condition was identified but not addressed.

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.” *Obioma Iro-Nwokeukwu v. Philadelphia Gas Works*, Docket No. C-2011-2247079 (Final Order entered April 23, 2015). Thus, the test to determine the adequacy of a utility's service is that of reasonableness. *Scherich v. Verizon Pennsylvania Inc.*, Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010). This is also the test to determine the adequacy of a utility's response to customer service complaints. *Id.* I find that the Complainant’s claim that PGW should notify potential tenants of any prior knowledge of the building’s history of hazardous conditions, goes beyond the public utility’s duty to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities.” 66 Pa.C.S.A. § 1501.

Similarly, the reasonableness test requires that a utility’s response to a dangerous situation be commensurate with the severity of the hazard detected. While there may be situations that require that the utility notify the community in the surrounding area, as well as to the local firefighters and other concerned groups of hazardous conditions in the area, I find that that such a response would have been out of proportion in view of the small leak that was detected in PGW’s service line on August 5, 2016. Instead, I find that PGW’s response to the discovery was reasonable under the circumstances.

Additionally, the Respondent successfully rebutted the Complainant’s claim that the pipe in PGW’s service line was too short or too small to properly service the building where the Service Address was located. Consequently, the Complainant failed to carry the burden of proving by a preponderance of the evidence that the pipe in PGW’s service line was wholly or partially responsible for the high gas bills that the Complainant received in the colder months during the period from February 2016 to March 2017. On the contrary, the preponderance of the evidence in this case indicates that the disputed bills were the direct result of a malfunctioning thermostat and the poor insulation of the Service Address, both of which are conditions outside the control or responsibility of the Respondent.

In view of the above, Julie Carnegie’s Complaint against PGW will be dismissed in its entirety.

## 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 seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which establishes material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

3. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" in conformity with the regulations and orders of the Commission. 66 Pa.C.S. § 1501.

4. Section 1501 of the Public Utility Code does not mandate perfect service nor must a public utility provide the best possible service. *Obioma Iro-Nwokeukwu v. Philadelphia Gas Works*, Docket No. C-2011-2247079 (Final Order entered April 23, 2015).

5. The Complainant did not meet her burden of proving that the Respondent failed to provide her with safe, reasonable, and adequate service.

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of Julie Carnegie, nee Ward against Philadelphia Gas Works at Docket No. F-2018-2644085 is denied in its entirety because she failed to carry her burden of proof.

2. That the Secretary mark this docket closed and discontinued.

Date: February 4, 2019

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/s/  
Eranda Vero  
Administrative Law Judge