

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sabrina Wiley	:	
	:	
v.	:	C-2018-3005780
	:	
Scott Water Company	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision dismisses a complaint filed by a customer of a water company who alleged that the company is threatening to shut off her service or has already shut off her service and that she is having a reliability, safety or quality problem. The complaint is dismissed because there is insufficient evidence demonstrating that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company in any way.

**HISTORY OF THE PROCEEDING**

On October 30, 2018, Sabrina Wiley filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Scott Water Company (Scott Water), docket number C-2018-3005780. In her complaint, Ms. Wiley indicated that Scott Water was threatening to terminate her service or has already shut off her service and that she is having a reliability, safety or quality problem with her utility service. Ms. Wiley attached to her complaint a detailed explanation stating that Scott Water indicated that it wishes to transfer ownership of the company to a community water association. Ms. Wiley explained, among other

things, that the cost of the water system is approximately \$260,000 and that the system needs substantial upgrades. Ms. Wiley added that the system only provides service to 25 homes and that this situation will cause financial hardship to those residents. Ms. Wiley requested that Scott Water be required to make the necessary upgrades to provide safe water. Ms. Wiley attached multiple documents to her complaint in support of her position.

On November 20, 2018, Scott Water filed an answer in response to Ms. Wiley's complaint. In its answer, Scott Water admitted or denied the various averments made by Ms. Wiley. In particular, Scott Water denied that there is any threat to terminate service to Ms. Wiley or any other customer of the company. Scott Water also denied that there are any safety problems with the water service provided by the company. The company admitted that the principals of Scott Water have facilitated the formation of a non-profit community association comprised of the households served by the company to take over ownership and control of the system. Scott Water denied, among other things, that the company would deliberately cease operation but noted that Mr. Scott, who tends to the daily operation of the system, is 85 years old and in failing health. Scott Water also included multiple attachments to its answer in support of its position that Ms. Wiley's complaint should be dismissed in its entirety.

On December 7, 2018, a telephonic hearing notice was issued establishing an initial telephonic hearing for this matter for Tuesday, January 15, 2019 at 10:00 a.m. and assigning me as the presiding officer. Also on December 7, 2018, a prehearing order was issued setting forth various rules that would govern that hearing. By hearing cancellation/reschedule notice dated December 14, 2018, the initial telephonic hearing was rescheduled for January 22, 2019.

The hearing convened on January 22, 2019, as scheduled. Ms. Wiley appeared *pro se* and presented four exhibits that were admitted into the record. Suzanne Trinh, Esquire appeared on behalf of Scott Water and presented one witness who sponsored five exhibits that were admitted into the record. A transcript of 64 pages was created.

The record in this case closed on February 14, 2019 when the transcript of the January 22, 2019 hearing was submitted to the Commission. For the reasons discussed below, Ms. Wiley's complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant in this case is Sabrina Wiley.
2. The Respondent in this case is Scott Water Company.
3. The service address is 2867 Johnson Drive, Chambersburg, PA.
4. Ms. Wiley and her husband attended a meeting of a local water association in August, 2018 wherein she heard several things about her water service that concerned her including that the water service could possibly be cut off. Tr. 7-8.
5. During the meeting, a preliminary three-year budget for a new water association was distributed. Tr. 9, 34.
6. The preliminary budget indicated various expenses that were needed to get the system running safely. Tr. 9-10.
7. The total cost estimated for replacing the water system was \$237,000. Tr. 10.
8. The water system serves 25 homes. Tr. 10, 14.
9. The homes on the water system do not have water meters. Tr. 12.
10. Scott Water has not raised its rates in at least 19 years. Tr. 13.

11. Ms. Wiley considered having a well drilled on her property but has not made the decision to do that. Tr. 14-15.

12. Ms. Wiley would like to see the water association pay for the cost of the system upgrades, and not the homes served by the system, if the association takes over the system. Tr. 18.

13. Wiley Exhibit B is entitled RSWA Inc. Budget three-year plan. Tr. 19; Wiley Exh. B.

14. Wiley Exhibit C is a memorandum dated September 20, 2018 to all homeowners served by Scott Water from the Rocky Springs Water Association Board of Directors. Tr. 20; Wiley Exh. C.

15. Wiley Exhibit D is a decision of the Pennsylvania Department of Environmental Protection (DEP) dated May 4, 2000 in the matter of Clyde A. Scott Water Co. Tr. 20; Wiley Exh. D.

16. Wiley Exhibit E is a petition to withdraw formal complaint and for approval of settlement agreement in the case captioned Don E. Crist, et al. v. Clyde A. Scott Water Co., docket number C-00003337, dated January 8, 2001. Tr. 21; Wiley Exh. E.

17. The three-year budget plan was distributed to the attendees at the August, 2018 meeting and shows various financial information related to the water system. Tr. 23; Wiley Exh. B.

18. Scott Water was required to install meters at each residence pursuant to the settlement agreement in Crist v. Clyde Scott Water Co. Tr. 23; Wiley Exh. E.

19. Ms. Wiley is currently receiving water. Tr. 25.

20. Ms. Wiley's family has not drunk the water from the system since they have lived at the service address but always uses bottled water. Tr. 25-26.

21. Ms. Wiley's family will use the water from the system to cook and bathe. Tr. 25-26.

22. Nancy Scott, along with her husband Clyde, bought the water company in 1982 and have been operating it ever since. Tr. 30-31.

23. As Mr. and Mrs. Scott have aged, they have looked for options for transitioning ownership of the system. Tr. 31.

24. None of the local water companies Mr. and Mrs. Scott approached to take over the company were interested in taking ownership of the system. Tr. 31, 48-49.

25. Ms. Scott began to work with Mark Billus from the DEP to transition the water company. Tr. 32.

26. A group of neighbors approached Ms. Scott to express interest in organizing a water association to operate the system. Tr. 33.

27. Scott Water Exhibit A is the articles of incorporation for the water association. Tr. 33-34, 46; Scott Water Exh. A.

28. Mr. Nepper was identified as someone who would operate the water system. Tr. 35, 49.

29. Mr. Nepper wanted the system to be upgraded. Tr. 35-36.

30. The company submitted daily water reports to DEP under the supervision of George Foreman, of Dennis E. Black Engineering, a certified water operator. Tr. 36-37.

31. There are no issues with the quality of Ms. Wiley's water. Tr. 37.
32. If a line breaks, the Scotts will hire a repairman to fix it at their own expense.  
Tr. 37.
33. There is no part of the system that is currently not functional. Tr. 38.
34. The Scotts' age motivates their desire to transition ownership of the water company. Tr. 39.
35. Scott Water has historically operated at a financial loss. Tr. 39.
36. The Scotts chose not to raise rates because of the cost of putting in for annual increases and because they did not want to burden their neighbors with the increase. Tr. 39, 49-50.
37. Scott Water Exhibit C is a capital budget and replacement schedule that was prepared by Unitech. Tr. 41, 47; Scott Water Exh. C.
38. The group of residents who formed the water association have made efforts to take over the system, such as speaking with DEP and exploring potential grants. Tr. 43-44.
39. Scott Water Exhibit B is the bylaws of the Rocky Spring Water Association that were adopted at the association meeting on August 16, 2018. Tr. 47; Scott Water Exh. B.
40. Scott Water Exhibit D is the annual report from Scott Water to the Commission dated December 31, 2017. Tr. 47; Scott Water Exh. D.
41. Scott Water Exhibit E is a proposed water user's agreement that was prepared and distributed to the members of the association but has not yet been adopted. Tr. 48; Scott Water Exh. E.
42. The chlorine injector on the system was replaced in August, 2018. Tr. 53.

## 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. Wiley complained that Scott Water is threatening to terminate her service or has already terminated her service and that she is having a reliability, safety or quality problem with her utility service. Ms. Wiley, 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. Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

In this case, Ms. Wiley complained that Scott Water has threatened to terminate her water service. Ms. Wiley also provided significant detail regarding her concern that the water system has been poorly managed to the point where the system requires substantial financial investment for its upgrade. Ms. Wiley believes that Scott Water should be responsible for providing safe water to the customers on the system. Ms. Wiley's complaint will be dismissed because she has failed to demonstrate that Scott Water violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided to her.

Mr. and Mrs. Scott have owned Scott Water since 1982 and have been looking for options to transfer ownership to someone else given that they are now aged. Tr. 30-31. Ms. Scott testified regarding various efforts that she has made to find someone else to transfer the system to. For example, Ms. Scott testified that she "petitioned different water companies throughout Pennsylvania and also within the county, Green Township, Franklin County, just any which way we could, really," but that none of the local water companies were interested in taking over the water system. Tr. 31. Ms. Scott noted that some were too far away and it would not be reasonable for them to run lines to the system. Tr. 31-32. Ms. Scott also testified that she had discussions with DEP about finding someone else to run the water system. Tr. 32-33. At that time, a group of neighbors came forward to indicate they were willing to organize a water association to operate the system. Tr. 33. As a result, articles of incorporation were created for the water association and various meetings of the association were held. Tr. 33-34; Scott Water Exh. A. The association presented a budget and identified someone who would operate the system. Tr. 34-35.

It was during one of the meetings of the association that Ms. Wiley heard things that concerned her that led her to file her complaint. As Ms. Wiley testified, she and her husband attended a meeting of the association in August 2018 where she was concerned that she was not being told all the information needed for her to make an informed decision about the transfer of the water company. Tr. 8. Ms. Wiley also testified that she was told the association was the only option for service:

And at that point, Ms. Nancy Scott said we could just cut the electricity off and walk away, and you'll have no water. That was the biggest red flag to me at that meeting, that at that point I needed to do something, because someone is threatening to take away our water to the neighborhood to me is not a safe situation to be in.

Tr. 8. Ms. Wiley further explained that she was very concerned about the state of the water system and that upgrades had not been made in years. Tr. 9. Ms. Wiley was concerned that the water system would need \$237,000 in upgrades. Tr. 10. Ms. Wiley also testified regarding other matters that concerned her and led her to file her complaint. Tr. 10-18.

None of these concerns raised by Ms. Wiley, however, give rise at this time to a finding of a violation of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

As a preliminary matter, the Commission has substantial requirements in place regarding when service to a customer can be terminated. For example, Chapter 56 of the Commission's regulations provides significant detail regarding when a public utility can terminate service. *See*, 52 Pa.Code Ch. 56. This includes the timing of termination, the provisions of the termination notices, procedures for when the notice of termination is disputed, requirements for personal contact, post-termination notice requirements and emergency provisions including medical certifications and restoration of service, among other things. Furthermore, to the extent that the Scotts seek to transfer ownership of the water system to another provider, such a transfer of ownership requires approval of the Commission pursuant to Section 1102 of the Public Utility Code. This Section requires:

**§ 1102. Enumeration of acts requiring certificate**

- (a) General rule.**—Upon the application of any public utility and the approval of such application by the commission, evidence by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

\* \* \* \* \*

- (2) For any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.

66 Pa.C.S. § 1102(a)(2). Scott Water must comply with these requirements before terminating service to Ms. Wiley or abandoning the system entirely.

While it was disconcerting for Ms. Wiley to hear Ms. Scott claim at the August 2018 meeting of the water association that one option is for the water company to “turn the electricity off and walk away,” Scott Water is not permitted under the Public Utility Code or the Commission’s regulations to do that. Scott Water has not “turned off the electricity and walked away.” Instead, Scott Water has taken steps to transfer ownership of the system to another entity.

In response to Ms. Wiley’s testimony, Ms. Scott explained her statement she made at the August 2018 meeting. Ms. Scott testified:

Q. All right. And as far as Ms. Wiley’s statement that there was a threat to turn off the lights and shut the system down, can you speak to whether that was a serious statement from you?

A. Well, that’s the alternative that we were told we had from the DEP at one point blank. Was there an alternative to when – to get us to give up the water, where if you go into abandoning it, you just don’t pay the bills and everything gets shut off.

Q. Okay. And are you doing everything in your power to prevent that from happening?

A. Yes, always have.

Tr. 39-40. Ms. Scott’s efforts to avoid abandoning the system are demonstrated by her efforts undertaken to seek other owners and, when that failed, to form the water association. This includes establishing articles of incorporation for the water association (Scott Water Exh. A), establishing bylaws of the association (Scott Water Exh. B), establishing a capital budget and replacement schedule (Scott Water Exh. C), identifying someone to operate the system, Tr. 35,

and various conversations with DEP. This is more than simply “cutting the electricity off and walking away.” During the hearing, Ms. Scott was asked:

Q. But are you aware, Ms. Scott, that, I mean, the Company can’t just really turn off the water service and walk away from providing service to these 25 homes. Are you aware of that?

A. Yes.

Tr. 54.

In contrast, Ms. Wiley has not presented evidence that Scott Water is threatening to terminate her service or has already terminated her service beyond the statement made by Ms. Scott at the August 2018 meeting of the water association. For example, Wiley Exhibit B, the bylaws of the water association, and Wiley Exhibit C, the budget, support Ms. Scott’s efforts to transfer ownership of the water system in a responsible manner and not “cut the electricity off and walk away.” Similarly, the legal documents in Wiley Exhibit D and Wiley Exhibit E are from 2000 and 2001 respectively and do not support Ms. Wiley’s argument that Scott Water is threatening to terminate her water service or has already terminated her water service. There is no evidence, for example, that Scott Water has issued Ms. Wiley a termination notice. In fact, Ms. Wiley still has water service. Tr. 25.

As a result, Ms. Wiley’s allegations that Scott Water is threatening to terminate her service or has already terminated her service are without merit and will be rejected. The evidence presented by Ms. Wiley in support of her claim is outweighed by the evidence presented by Scott Water. *See, Milkie, supra.* Scott Water is advised, however, as Ms. Scott was advised during the hearing, that it cannot “cut the electricity off and walk away.” Doing so would likely be a violation of the Public Utility Code and the Commission’s regulations noted above, among other things. Whereas Ms. Scott’s comment during the August 2018 meeting of the water association was not appropriate, it does not give rise to a violation of the Public Utility Code in these circumstances.

With regard to the other concerns raised by Ms. Wiley, none of the other issues raised by her in her complaint or during the hearing raise any violations of the Public Utility Code or the Commission's regulations.

For example, Ms. Wiley was concerned that she is not being given all the necessary information she needs to make a decision on whether to support forming a water association to provide her service. Tr. 8. Ms. Wiley also expressed concerns about the age and condition of the system and the cost to make needed repairs. Tr. 9. Ms. Wiley testified that if the system were to be run by the water association, the system would need to be transferred in working condition, not with hundreds of thousands of dollars of repairs needed. Tr. 10. Ms. Wiley also testified regarding the fact that none of the homes have water meters even though they were required pursuant to a proceeding back in 2000. Tr. 12. Ms. Wiley also provided other examples of where she thought the water system was poorly run and raised other concerns regarding the system being taken over by a water association.

Some of these issues are beyond the Commission's jurisdiction to hear. It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. § 101 *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977). The Commission does not have jurisdiction to hear complaints regarding whether Ms. Wiley received sufficient information in the August 2018 meeting of the water association she and her husband attended.

Other issues, such as the age and condition of the system and the cost to make needed repairs, are better raised in a proceeding involving any transfer of the company to another owner when Scott Water files for abandonment. Ms. Wiley will be able to raise her concerns regarding those issues in that proceeding.

With regard to Ms. Wiley's concerns regarding service quality, all utilities are required to provide adequate, efficient, safe and reasonable service pursuant to Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501. However, Ms. Wiley has not presented sufficient evidence to satisfy her burden of proof. Ms. Wiley testified that she is currently receiving water and that her family always drank bottled water but they do use the water to cook and bathe. Tr. 25-26. Ms. Wiley also testified that she is not aware of any actions by DEP concerning the quality of the water in the system. Tr. 26. Ms. Wiley's arguments regarding service quality will be rejected.

In conclusion, Ms. Wiley's complaint against Scott Water will be dismissed. Ms. Wiley has failed to demonstrate that Scott Water threatened to terminate her service or terminated her service. The statement made by Ms. Scott at the August 2018 meeting of the water association – that she may cut electricity off and walk away from the water system – may have been inappropriate but did not rise to the level of a violation of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Other issues raised by Ms. Wiley would more appropriately be raised when and if Scott Water files to abandon its service.

As a result, the evidence presented by Ms. Wiley is outweighed by the evidence presented by Scott Water. Milkie. Therefore, Ms. Wiley has failed to satisfy her burden to demonstrate that Scott Water violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Ms. Wiley's complaint will be dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of 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 problems 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. Pa. Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

9. Chapter 56 of the Commission's regulations provides significant detail regarding when a public utility can terminate service. *See*, 52 Pa.Code Ch. 56.

10. Upon the application of any public utility and the approval of such application by the Commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful for any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron. 66 Pa.C.S. § 1102(a)(2).

11. It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super. 1945).

12. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

13. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth. 1992).

14. As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. § 101 *et seq.*

15. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

16. Ms. Wiley has failed to satisfy her burden to demonstrate that Scott Water 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 complaint filed by Sabrina Wiley against Scott Water Company and dated October 30, 2018 at docket number C-2018-3005780 is hereby dismissed.
2. That this matter be marked closed.

Date: March 29, 2019

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