

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Brown	:	
	:	
v.	:	C-2018-3005868
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This decision finds that the Complainant failed to meet his burden of proving that the Company violated any section of the Public Utility Code, any Commission regulations or order when it entered his home to check for a gas leak.

HISTORY OF THE PROCEEDING

On October 29, 2018, David Brown (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Company or Respondent). In his Complaint, Mr. Brown indicated that PGW broke into his home on October 10, 2018 on a gas leak investigation and violated his rights. Mr. Brown alleged that there was no gas leak at his residence.

Respondent filed an Answer to the Complaint on November 28, 2018. In the Answer, PGW acknowledged that there was a gas leak in the vicinity of the Complainant's

residence. PGW asserts that it was entitled to access its meter and abate any emergency situation if a gas leak was discovered.

On December 13, 2018, the Complainant filed a response to the Answer.

By Hearing Notice dated December 12, 2018, the matter was scheduled for an initial hearing on Wednesday, January 23, 2019 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 17, 2018, which provided the parties with the procedures for the hearing.

On January 8, 2019, PGW filed Preliminary Objections and a Motion to Strike which alleges that there is no basis upon which relief can be granted.¹

The hearing was held as scheduled on January 23, 2019. Complainant represented himself and presented one exhibit which was entered into the record. PGW was represented by Graciela Christlieb, Esq. Ms. Christlieb presented the testimony of Richard Herbert, General Supervisor in the Field Operations Department. PGW did not present any exhibits.

The hearing resulted in a 29-page transcript. The record closed on March 6, 2019, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is David Brown, who resides at 1353 South 46th Street, Philadelphia, Pennsylvania 19148 (Service Address). Tr. 9.

¹ The Preliminary Objections and Motion to Strike are denied as moot because the hearing was held on the merits of the case and the matter will be addressed on the merits in this decision.

2. The Respondent is the Philadelphia Gas Works, a utility under the jurisdiction of the Public Utility Commission.

3. On October 10, 2018, PGW received a telephone call which indicated that there was a possible gas leak in the vicinity of the Service Address. Tr. 20-21.

4. PGW technicians entered the Service Address to check for leaks. Tr. 9-10; Complainant Exh. 1.

5. The Complainant was not home at the time. Tr. 9-10.

6. PGW technicians left a notice at the Service Address, which indicated they had entered the Service Address to check for a possible gas leak. Tr. 9-10; Complainant Exh. 1.

7. The notice left by PGW indicated that the Philadelphia Police Department had accompanied the technician into the Service Address. Complainant Exh. 1.

8. PGW brought Philadelphia Police Department officers with them when they were at the Service Address conducting a check for the possible gas leak. Tr. 10, 14-15; Complainant Exh. 1.

DISCUSSION

Gas Leak Procedures

The Complainant contends that PGW violated his rights by entering his residence to check for a potential gas leak and bringing the police to his premises. The Complainant indicated that he has a pending lawsuit against the City of Philadelphia and the Philadelphia Police Department. PGW argues that it is allowed to enter a premise if there is a suspected gas leak, even if an owner is not home at the time.

As to service, Section 1501 of the Code requires that:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). “Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .” 66 Pa.C.S. § 102.

It is also required that each public utility must 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. 52 Pa.Code § 59.24(a). Further, a public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa.Code § 59.33(a).

The Commission’s regulations relating to Safety, 52 Pa. Code §59.33(b), provide as follows:

(b) *Safety code*. The minimum safety standards for all gas transmission and distribution facilities in this Commonwealth shall

be those issued under the pipeline safety law as found in 49 U.S.C.A. §§60101—60503 and as implemented at 49 CFR Parts 191—193 and 199, including all subsequent amendments thereto future Federal amendments to 49 CFR Parts 191—193 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission's regulations with regard to the minimum safety standards for all gas transmission and distribution facilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

These provisions indicate that the Commission has adopted the safety standards established by the federal laws for all gas transmission and distribution facilities as implemented at 49 CFR Parts 191—193 and 199, and that if the federal government amends or modifies its regulations, the amendment or modification will take effect 60 days after the effective date of the federal amendment or modification in the Commonwealth unless the Commission publishes a notice in the Pennsylvania Bulletin stating that the amendment or modification may not take effect. On March 16, 2000, the Commission ratified and adopted Amendments to Parts 192 of Title 49 of the Code of Federal Regulations.

The Department of Transportation's regulations relating to External corrosion control: Examination of buried pipeline when exposed, 49 CFR 192.459, provide as follows:

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion requiring remedial action under §§192.483 through 192.489 is found, the operator shall investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion.

49 CFR 192.459 specifies the scope of investigating for corrosion or leaks, stating that indirect methods may be used as well as visual examination to carry out the investigation.

The rule allows operators to use their own judgment on where to stop for corrosion or leaks; otherwise, the rule could be interpreted to set in motion a seemingly endless search for harmful corrosion or leaks on pipelines. Corrosion and leak repairs are performed under 49 CFR 192.485(a) and 192.487(a) and 192.717. Only a reasonable effort is required to find corrosion in the vicinity of an exposed, corroded pipe.

Moreover, under Chapter 22 of the Public Utility Code, related to Natural Gas Competition, reliability is defined as a term which comprises adequacy and security.

The term "adequacy" means the provision of sufficient volumes and deliverability of natural gas so as to supply the requirements of retail gas customers, taking into account peak and seasonal demands, as well as isolated market areas and system operation contingencies. The term "security" means designing, maintaining and operating a system so that it can safely handle extreme conditions as well as emergencies.

66 Pa.C.S. § 2202.

Lastly, the duties of natural gas distribution companies include the:

- (a) Integrity of distribution system.--
 - (1) Each natural gas distribution company shall maintain the integrity of its distribution system at least in conformity with the standards established by the Federal Department of Transportation and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all retail gas customers connected to its system consistent with this title and the commission's orders or regulations.

66 Pa.C.S. § 2205.

A natural gas distribution company shall be responsible for customer service functions consistent with the orders and regulations of the commission, including, but not limited to, meter reading, installation, testing and maintenance and emergency response for all customers, and complaint resolution and collections related to the service provided by the natural gas distribution company. Customer service and consumer protections and policies for retail gas

customers shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter. 66 Pa.C.S. § 2206(a).

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the burden of proof. Complainant seeks relief from the Commission, and, therefore, has the burden of proof in this proceeding.

“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).

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, a complainant will prevail. If the utility rebuts complainant’s evidence, the burden of going forward with the evidence shifts back to a 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. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

If Respondent submits evidence of “co-equal” weight to counter Complainant’s evidence, Complainant has not satisfied the burden of proof unless additional evidence opposing Respondent’s evidence is presented. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pa. Pub. Util. Comm’n*, 66 Pa. Cmwlth. 282, 443 A.2d 1373 (1982), *aff’d*. 501 Pa. 443, 461 A.2d 1234 (1983).

Any decision of the Commission must be supported by substantial evidence. See, e.g., Section 704 of the Administrative Agency Law, 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*, 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).

On October 10, 2018, PGW received a telephone call which indicated that there was a possible gas leak in the vicinity of the Service Address. Tr. 20-21. PGW technicians entered the Service Address to check for leaks. Tr. 9-10; Complainant Exh. 1. The Complainant was not home at the time. Tr. 9-10. PGW technicians left a notice at the Service Address, which indicated they had entered the Service Address to check for a possible gas leak. Tr. 9-10; Complainant Exh. 1. PGW brought Philadelphia Police Department officers with them when they were at the Service Address conducting a check for the possible gas leak. Tr. 10, 14-15; Complainant Exh. 1.

As noted in *Joseph McGuckin v. Philadelphia Gas Works*, Docket No. C-2009-2134762 (Final Order entered May 27, 2010), “[a] gas leak is in itself a nuisance, a nuisance of the most dangerous kind, involving the lives and health of the residents living near the leak.” A gas leak “can cause a loss of lives and serious bodily injuries, and a loss of properties.” *Id.* Under *McGuckin*, Administrative Law Judge Nguyen indicated that a gas leak report provides justification for the Respondent to enter other properties, to find other leaks, and requires the Respondent to take speedy action. Further, the Commission adopted the Federal safety rules, allowing the Respondent to follow its own procedure, which is reasonable, to track down all possible gas leaks. *Id.*

There was no violation by PGW here. PGW needed to check for gas leaks in the area of the Complainant’s premises. PGW is entitled to access to its meter and facilities on the Complainant’s property. See 52 Pa.Code § 59.24(a). Further, PGW has a responsibility to warn and protect the public from danger. 52 Pa.Code § 59.33(a). This gas leak is a public safety issue. While the Complainant was not home at the time, it was reasonable for PGW to enter the premises to check for any danger.

In terms of the police presence, it is not unreasonable for PGW to act in terms of protecting its employees and being able to access the source of a possible gas leak that could lead to an explosion. While the Complainant asserts that he has a lawsuit against the City of Philadelphia and the Philadelphia Police Department, there is nothing in the record to suggest that PGW employees knew about the lawsuit or were colluding with the other City authorities. PGW was responding to a call regarding a possible gas leak in the area and was trying to preserve the safety of the public. There is no *prima facie* case established and the Complainant does not prevail on this issue. As such, the Complaint must be denied and dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the burden of proof.

3. A Respondent presenting evidence of “co-equal” weight to refute Complainant’s evidence will prevail absent the Complainant presenting additional opposing evidence opposing. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pa. Pub. Util. Comm’n.*, 66 Pa. Cmwlth. 282, 443 A.2d 1373 (1982), *aff’d*. 501 Pa. 443, 461 A.2d 1234 (1983).

4. 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.

5. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable

interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. 66 Pa.C.S. § 1501.

6. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

7. Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.
66 Pa.C.S. 102.

8. Each public utility must 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. 52 Pa.Code § 59.24(a).

9. A public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa.Code § 59.33(a).

10. PGW did not act unreasonably and therefore was not in violation of 66 Pa.C.S. § 1501.

