

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wallace McGaughey	:	
	:	
v.	:	C-2018-3005956
	:	
Peoples Natural Gas Company	:	

**INITIAL DECISION**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses a formal Complaint filed by a customer of a natural gas distribution company seeking a Commission order directing the company to maintain and repair the customer-owned service line leading to the service address. The Complaint is dismissed because the customer failed to demonstrate that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with regard to the service provided.

**HISTORY OF THE PROCEEDING**

On November 5, 2018, Wallace McGaughey, Jr. filed with the Pennsylvania Public Utility Commission a formal Complaint against Peoples Natural Gas Company (Peoples), at Docket Number C-2018-3005956. In the Complaint, Mr. McGaughey stated “I fully expect Peoples Gas to reimburse me for those expenses and trouble experienced in attempting to ensure gas service to my home in the coming winter months. Total expense was \$1,900.00 not counting any legal fees necessary to complete this process.” The Complaint was served by the Commission on November 13, 2018.

On December 6, 2018, Peoples filed an Answer in response to the Complaint, stating that the Complainant was improperly seeking money damages that the Commission could not legally award, and that Peoples acted in accordance with the law. Also on December 6, 2018, Peoples filed Preliminary Objections to the Complaint, stating that the Complaint was improperly seeking money damages that the Commission could not legally award. As a result, Peoples requested that a portion of the Complaint be stricken. Mr. McGaughey did not file a response to the Preliminary Objections.

The Preliminary Objections were assigned to me for a ruling. By Order dated January 16, 2019, the Preliminary Objections were granted, and the portion of the Complaint seeking money damages was stricken. The remaining portions of Mr. McGaughey's Complaint were scheduled to be heard during an Initial Hearing on February 6, 2019.

The Hearing convened on February 6, 2019 as scheduled. Both parties appeared and provided testimony and documentary exhibits for the record.<sup>1</sup> At the conclusion of the hearing, Peoples requested that the parties be allowed to file legal briefs prior to closing the record. Mr. McGaughey did not oppose the request, and I advised the parties that I would allow approximately 60 days for the filing of legal briefs. A Briefing Order was issued on March 6, 2019 which provided the parties with a deadline of April 2, 2019 to file their briefs. Peoples filed its brief on April 2, 2019. Mr. McGaughey did not file a brief.

The hearing in this case consists of a transcript totaling 75 pages. The record was closed on April 2, 2019, the deadline for the parties to file their briefs. This matter is ready for disposition. For reasons discussed below, the Complaint in this matter will be dismissed.

### FINDINGS OF FACT

1. The Complainant in this case is Wallace McGaughey.

---

<sup>1</sup> The Exhibits were as follows: Complainant Exhibit C-1 (Transcript of Discussion with Demarco and Metro), Complainant Exhibit C-2 (Formal Complaint with attachments). Peoples Exhibit A (New Customer Letter), Peoples Exhibit B (Tariff), Peoples Exhibit C (Pa. Code Section), Peoples Exhibit D (Pa. Statutes Section), Peoples Exhibits F through J (Sections of Code of Federal Regulations).

2. The Respondent in this case is Peoples Natural Gas Company.

3. The service address is 2460 Home Street, Indiana, PA 15701.

4. In October 2018, Mr. McGaughey detected a gas leak on the gas service line that runs from the meter, located at the edge of the road, to the service address. Tr. 7, 8.

5. The line in question is located between the meter, which is placed by and owned by Peoples, and the location where the gas supply is recorded, and the exterior wall of the service address. Tr. 38-41.

6. Mr. McGaughey reported the leak to Peoples and was advised by Peoples that he was responsible for repairing the leak, because that part of the gas line was customer-owned service line. Tr. 8.

7. Mr. McGaughey arranged for the necessary repairs and paid for those repairs. Complainant Exhibit C-2, p. 3.

8. Mr. McGaughey disagrees that he owns the portion of the gas line where the leak was repaired and paid for by him. Complainant Exhibit C-2, pp. 2, 3.

9. Mr. McGaughey states that Peoples owns the portion of the gas line where the leak was repaired and paid for by him, and that Peoples should bear the maintenance and repair responsibility for that portion of the line. Exhibit C-2, pp. 2, 3.

10. The Peoples Natural Gas Company LLC Tariff, Section 4, sets forth that the customer owns, provides and is responsible for the repair of the Customer-Owned Service Line. Tr. 43; Peoples Exhibit B.

## 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, 70 A.2d 854 (Pa. 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.

1) Mr. McGaughey’s claims

Mr. McGaughey contends that the Code of Federal Regulation mandates that Peoples is responsible for the maintenance and repair of the gas line in question. Specifically, Mr. McGaughey cites 49 CFR § 192.3 which states the following:

Service line means a distribution line that transports gas from a common source of supply to any individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer’s piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

Complainant Exhibit C-2 (October 18, 2018 letter). Mr. McGaughey then cites to 49 CFR § 192.605 (b)(1) which states:

(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart . . . .

Complainant Exhibit C-2 (October 18, 2018 letter). Mr. McGaughey then cites to 49 CFR § 192.3 which states that “Pipeline means all parts of those physical facilities through which gas moves in transportation . . . .” Complainant Exhibit C-2 (October 18, 2018 letter).

Given the above, Mr. McGaughey claims that his service line is part of the Peoples pipeline, and that Peoples is responsible for maintaining and repairing all portions of its pipeline. Tr. 16-18; Complainant Exhibit C-2 (October 18, 2018 letter). Mr. McGaughey also claims that he had discussions with employees of the Commission, who advised him that he was correct in his views regarding the gas line in question. Complainant Exhibit C-1.

2) Peoples’ claims

Peoples contends that The Peoples Natural Gas Company LLC Tariff, Section 4, sets forth that the customer owns, provides and is responsible for the repair of the Customer-Owned Service Line. Tr. 43; Peoples Exhibit B; Peoples Brief at p. 3.

Peoples next contends that Section 59.34 of Title 52 of the Pennsylvania Code defines a customer-owned service line as:

“includes that piping serving a residential or commercial customer which is between the main, pipeline or other source of supply and whichever is the more remote of either the meter set assembly, or the wall of the residence or commercial building if the customer owns part of the piping.”

Peoples Brief at p. 4. Peoples states that the line in question is located between the meter, which is placed and owned by Peoples and the location where the gas supply is recorded, and the exterior wall of the service address. *Id.*; Tr. 38-41. Peoples then cites Section 59.34(a) of the Pennsylvania Code which states that if a leak is detected on a customer-owned service line, the public utility shall require the customer to repair or renew the line. Peoples Brief at p. 4.

Peoples next contends that Section 1510 of the Pennsylvania Public Utility Code (66 Pa. C.S.A. § 1510) sets forth that a utility shall furnish, install, and maintain service lines in accordance with the rules and regulations of the utility's filed Tariff. Peoples Brief at p. 5. Since Peoples' filed Tariff requires customer-owned service lines to be repaired and maintained by the customer, Peoples contends that it was acting lawfully in requiring Mr. McGaughey to bear the cost and responsibility of fixing the leak. Tr. 43; Peoples Exhibit B; Peoples Brief at pp. 3, 5.

Finally, Peoples contends that Mr. McGaughey's interpretation of the various sections of the Code of Federal Regulations is incorrect. Specifically, Peoples notes that 49 CFR § 192.16 states that a utility operating a gas service line is not responsible to maintain a customer's buried piping, but is instead only required to notify the customer that the utility (operator) does not maintain the customer's buried piping. Peoples Brief at pp. 5, 6. Moreover, Peoples contends that it complied with this requirement by specifically notifying Mr. McGaughey that Peoples does not own or maintain the service line running from his property line to his meter. Peoples Exhibit A.

3) Disposition

Having reviewed the record as a whole, including testimony and documentary evidence, I conclude that Mr. McGaughey has failed to demonstrate by a preponderance of the evidence that Peoples is responsible for maintaining and repairing the service line at issue in this case.

The first factor in reaching this conclusion is 49 CFR § 192.605 (b)(1) which states:

(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart . . . .

Complainant Exhibit C-2 (October 18, 2018 letter). Mr. McGaughey relies heavily on this regulation as standing for the proposition that Peoples is required to maintain the service line at issue. However, Mr. McGaughey ignores the express language of this regulation, which merely requires Peoples to create a manual with procedures for operating, maintaining and repairing the pipeline. Nowhere does this regulation state that Peoples itself is required to perform the maintenance and repairs; it simply provides that Peoples must create a procedural manual in that regard.

The next factor in reaching this conclusion is that Peoples' Commission-approved Tariff expressly provides that the customer is responsible for maintaining and repairing customer-owned service lines. Additionally, Peoples is required by Section 1510 of the Public Utility Code to furnish, install and maintain service lines in accordance with its filed Tariff. Since Peoples' filed Tariff requires customer-owned service lines to be repaired and maintained by the customer, Peoples contends that it was acting lawfully in requiring Mr. McGaughey to bear the cost and responsibility of fixing the leak. Tr. 43; Peoples Exhibit B; Peoples Brief at pp. 3, 5. Given the evidence in this case, Peoples has demonstrated that the line in question is Mr. McGaughey's customer-owned service line as that term is defined in Peoples Tariff and related Commission filings. *Id.* Therefore, Mr. McGaughey is responsible for maintaining and repairing the line in question.

The next factor in reaching this conclusion is that the language of 49 CFR § 192.16 clearly indicates that a utility is not required to maintain a customer's buried piping, which remains the responsibility of the customer. While Mr. McGaughey disagrees with this interpretation, I find his arguments to be without merit, as the language of the regulation is clear and free from doubt.

Finally, Mr. McGaughey also claims that he had discussions with employees of the Commission, who advised him that he was correct in his views regarding the gas line in

question (*See*, Complainant Exhibit C-1). I note that Peoples objected to the admission of this document, and that I admitted it into the record subject to my determination of what weight, if any, would be afforded to the document. I assign no evidentiary weight to the document because, even assuming that it is a word-for-word recitation of the phone call in question, I am not bound by the legal opinions of the parties to that phone call. Having been assigned to determine the legal responsibilities of the parties in this matter, I am required to undertake an independent evaluation of the law and apply the law to the facts of this matter. I have made that evaluation as discussed above.

For the reasons mentioned above, the Complaint will be dismissed. The Complainant has failed to demonstrate, by a preponderance of the evidence, that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with regard to the service provided.

#### 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). "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).

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).

