

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cheri Royer	:	
	:	
v.	:	C-2019-3007709
	:	
UGI Utilities, Inc.	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision dismisses a formal complaint filed by a customer of a natural gas distribution company who averred that the construction activities of the company on the street in front of her property caused damage to her property and prevents her from driving her car onto her driveway without scraping the bottom of her car. The complaint will be dismissed because the customer failed to present substantial record evidence demonstrating that the company violated the Public Utility Code or a Commission order or regulation.

**HISTORY OF THE PROCEEDING**

On February 6, 2019, Cheri Royer filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI), docket number C-2019-3007709. In her complaint, Ms. Royer averred that construction activity by UGI has caused sink holes to appear near her property and that, as a result, she could no longer access her property. Ms. Royer attached multiple documents to her complaint in support of her position, including multiple pictures and her related notes. Ms. Royer requested that UGI fix the sink

holes and her driveway so that there is no more sinking and she can get her cars in and out of her driveway.

On February 26, 2019, UGI filed an answer to the complaint. In the answer, UGI admitted or denied the various averments Ms. Royer made. In particular, UGI admitted that it performed main gas line repair work in the public street in August and September 2018 in the vicinity of Ms. Royer's home but denied that the work caused damage to Ms. Royer's driveway. UGI argued that any displacement of the driveway was of long-standing duration and that the work by UGI had no impact.

On March 5, 2019, a hearing notice was issued setting an initial telephonic hearing for this matter for Tuesday, April 9, 2019 and assigning me as the Presiding Officer. A corrected hearing notice was issued on March 11, 2019 correcting the toll-free bridge number to be used to access the hearing. Also on March 11, 2019, a prehearing order was issued setting forth various procedural rules that would govern the hearing.

The hearing convened on April 9, 2019, as scheduled. Ms. Royer appeared *pro se* and provided oral testimony as well as presented one witness, her husband, and 11 exhibits that were admitted into the record. Larry Crayne, Esquire, represented UGI and presented one witness who sponsored six exhibits that were admitted into the record. A transcript of 48 pages was created.

The record in this case closed on May 2, 2019 when the transcript was submitted to the Commission. For the reasons discussed below, Ms. Royer's complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant in this case is Cheri Royer.
2. The Respondent in this case is UGI Utilities, Inc.

3. The service address is 426 Eisenbrown Street, Reading, Pa.
4. Ms. Royer cannot drive her car onto her driveway without scraping the front bumper or door jams on her car. Tr. 8.
5. Ms. Royer contacted her water/sewer company because the water/sewer line runs under her driveway but the water/sewer company found no problems. Tr. 9-10.
6. Royer Exhibit Numbers 1-5 are various pictures of Ms. Royer's driveway and the street in front of the driveway showing cracking and lifting or sinking of the street. Royer Exh. Nos. 1-5; Tr. 11-13.
7. Royer Exhibit Numbers 6-10 are various pictures of the street proximate to Ms. Royer's driveway showing various holes dug and repaired by UGI over the past three years. Royer Exh. Nos. 6-10; Tr. 13-15.
8. Royer Exhibit Number 11 is a picture of the area around the gas meter outside Ms. Royer's home. Royer Exh. No. 11; Tr. 15-16.
9. Ms. Royer put boards on the street in front of her driveway to prevent the bottom of her car from scraping the driveway. Tr. 21; *see also*, UGI Exh. No. 1.
10. Mr. Garcia is Ms. Royer's husband. Tr. 26.
11. Jamie Spies is a senior supervisor with UGI. Tr. 32.
12. Mr. Spies worked for 14 years in the field and has been a supervisor for the past two and a half years. Tr. 32.
13. UGI performed work on Eisenbrown Street from September, 2017 to September, 2018 that required the street to be opened three times. Tr. 33.

14. UGI made one cut at the north side of Ms. Royer's driveway and other cuts approximately 15 feet south of the driveway. Tr. 33.

15. UGI did not have any heavy equipment on Ms. Royer's driveway. Tr. 34.

16. UGI did not perform any work behind the curb line. Tr. 35.

17. The work performed by UGI did not cause any excessive vibration that might have damaged Ms. Royer's sidewalk or driveway. Tr. 36.

18. UGI Exhibit Numbers 1 through 3 are photographs that were taken by Mr. Spies on January 3, 2019 and show various views of Ms. Royer's sidewalk and the street in front of her sidewalk. Tr. 36-38; UGI Exh. Nos. 1-3.

19. UGI Exhibit Number 3 is a photograph that shows the street opening UGI cut on the northside of Ms. Royer's driveway. UGI Exh. No. 3; Tr. 38-39.

20. UGI Exhibit Numbers 4 through 6 are Google Map photographs of Ms. Royer's driveway and the street in front of her driveway taken in 2011. UGI Exh. Nos. 4-6; Tr. 39-41.

### 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) (Se-Ling Hosiery). 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. Royer averred that UGI's construction activity caused damage to her property and prevents her from driving her car on to her driveway. Ms. Royer requested that UGI fix the sink holes and her driveway so that there is no more sinking and she can get her cars in and out of her driveway. Ms. Royer, 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).

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. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

Furthermore, the averments raised in Ms. Royer's complaint may raise violations of UGI's obligation to comply with Section 1501 of the Public Utility Code. Section 1501 provides, in pertinent part:

**§ 1501. Character of service and facilities**

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. . . .

66 Pa.C.S. § 1501. To the extent that UGI's construction activity in the street in front of Ms. Royer's driveway caused damage to her property, that may constitute unreasonable service in violation of Section 1501 or another provision of the Public Utility Code.

In this case, Ms. Royer averred in the complaint that UGI's repeated opening of the street in front of her driveway has caused damage to her driveway and the street in front of her driveway. During the hearing, Ms. Royer explained that she first contacted her township when she could no longer get into her driveway without scraping the bottom of her car. Tr. 8. Ms. Royer said she was told that the issue pertained to UGI digging in the street. Tr. 8. Ms. Royer said that she also called the water/sewer company who said they found nothing wrong with the water/sewer line. Tr. 9. Ms. Royer next testified that she then spoke with UGI employees who were doing work on the street and that the UGI supervisor told her to contact the Commission. Tr. 10.

This testimony was supported by 11 pictures and testimony from Ms. Royer's husband, who generally provided the same testimony as Ms. Royer. The pictures showed various views of Ms. Royer's driveway and the street in front of the driveway depicting cracking and lifting or sinking of the street. Royer Exh. Nos. 1-5; Tr. 11-13. Other pictures also showed portions of the street in front of Ms. Royer's driveway including holes dug and repaired by UGI over the past three years. Royer Exh. Nos. 6-10; Tr. 13-15. Ms. Royer's husband, Mr. Garcia, testified that the problems got worse after UGI performed their work, noting that the holes they dig are not fixed the same day but rather are covered with a big metal plate that lets rain in. Tr. 28. Mr. Garcia added that he works for a utility company and that he had a contractor look at the problem who confirmed that rain is entering the holes covered by the metal plate. Tr. 28.

In response to the evidence and testimony presented by Ms. Royer and her husband, UGI presented the testimony of Jamie Spies, a senior supervisor for UGI responsible for supervising utility work in public streets. Tr. 32. Mr. Spies testified that UGI has done work

in the street in the vicinity of Ms. Royer's home from September 2017 to September 2018 that required the street to be opened three times. Tr. 32-33. Mr. Spies noted that one cut was at the north side of the driveway and the others were approximately 15 feet south of the driveway. Tr. 33. Mr. Spies added that this did not involve any heavy equipment on Ms. Royer's driveway. Tr. 34. Mr. Spies testified that, in his opinion, UGI "had nothing to do with the subsidence or the raising of the driveway apron and sidewalk" and that the damage "looks like an ongoing issue, that's not caused by anything that UGI did." Tr. 34-35.

Mr. Spies also sponsored pictures of Ms. Royer's driveway in support of his position that UGI's activities did not cause the damage to Ms. Royer's driveway or the street in front of the driveway. Three of the pictures were taken on January 3, 2019 depicting the damage to the sidewalk and the street. UGI Exh. Nos. 1-3; Tr. 36-39. One picture also shows the relationship of Ms. Royer's driveway to the work performed by UGI. UGI Exh. No. 3; Tr. 38-39. In addition, UGI also presented Google Map pictures from 2011 showing the sidewalk and the driveway apron. Mr. Spies testified that these pictures show that the driveway apron was rising and the sidewalk was settling. Tr. 40. Mr. Spies added that the pictures show that there was no UGI digging in the street at that time. Tr. 40-41.

When viewing the record evidence presented by both parties in this proceeding, it is clear that Ms. Royer has failed to satisfy her burden of demonstrating that UGI violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff as it relates to the damage to her driveway and the street in front of her driveway.

It is clear that there is damage to Ms. Royer's driveway and the street in front of Ms. Royer's driveway. It is also clear that UGI has opened the street on three occasions in the area near Ms. Royer's driveway. It is not clear, however, that these two things are related. As noted above, as the complainant, Ms. Royer has the burden to demonstrate that UGI violated the Public Utility Code, a Commission regulation or order or a Commission-approved tariff of the company. *See e.g.*, 66 Pa.C.S. § 332(a). This means that Ms. Royer has to establish that UGI violated the Public Utility Code, a Commission regulation or order or a Commission-approved tariff of the company by a preponderance of the evidence. Se-Ling Hosiery, *supra*.

Furthermore, 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 the complainant. Milkie, supra. The record demonstrates that UGI effectively rebutted the testimony provided by Ms. Royer in support of her complaint.

Although the pictures provided by Ms. Royer demonstrate that there is damage to Ms. Royer's driveway and the street in front of the driveway, which UGI does not contest, there is no evidence other than Ms. Royer's testimony that UGI's activities caused that damage. Bald assertions, personal opinions or perceptions do not constitute evidence. Rivera v. Philadelphia Gas Works, Docket No. C-2010-2164222 (Order entered January 12, 2012); *citing*, Pa. Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987). There could be other reasons why there is damage to Ms. Royer's driveway and the street in front of her driveway beyond the actions of UGI. UGI is not required, however, to demonstrate that UGI's activities did not cause the damage, Ms. Royer is required to demonstrate that it did.

As such, there is no substantial evidence in this proceeding that demonstrates that the activities by UGI damaged Ms. Royer's driveway or the street in front of her driveway. Therefore, Ms. Royer has failed to satisfy her burden to demonstrate that UGI in any way violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Ms. Royer's complaint must, therefore, be denied.

#### 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).

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).

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. 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. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth 23, 480 A.2d 382 (1984).

9. 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. 66 Pa.C.S. § 1501.

10. Bald assertions, personal opinions or perceptions do not constitute evidence. Rivera v. Philadelphia Gas Works, Docket No. C-2010-2164222 (Order entered January 12, 2012); *citing*, Pa. Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

11. Ms. Royer has failed to satisfy her burden to demonstrate that UGI's construction activities caused damage to her driveway in violation of the Public Utility Code or a Commission order or regulation.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Cheri Royer against UGI Utilities, Inc. on February 6, 2019 at Docket Number C-2019-3007709 is hereby dismissed.

2. That this matter be marked closed.

Date: June 28, 2019

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