

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Brenda Bloom	:	
	:	
v.	:	C-2019-3008683
	:	
Overbrook Water Company	:	

**INITIAL DECISION**

Before  
Benjamin J. Myers  
Administrative Law Judge

**INTRODUCTION**

Customers filed a complaint against their water utility alleging inadequate and unreasonable service. The complaint requests that the Pennsylvania Public Utility Commission (Commission) order the sale of their water provider to a larger water utility or in the alternative impose fines on their utility. This decision dismisses the complaint because the customers have failed to show that the utility has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.

**HISTORY OF THE PROCEEDING**

On March 14, 2019, Brenda Bloom and her husband Michael Bloom (Complainants), filed a formal complaint with the Commission alleging that Overbrook Water Company (Respondent) failed to provide reasonable and adequate water service to their home located at 62 Yeager Ave., Shavertown, Pennsylvania. The Complainants cited various instances of water main breaks, boil advisories and low water pressure. The Complainants requested that the Commission force the sale of the Respondent's facilities to a larger water utility.

On April 9, 2019, Respondent filed an answer to the complaint. This answer admitted or denied the various averments of the complaint. The Respondent generally admitted that the various issues and repairs listed by the Complainants had occurred but denied other allegations. Respondent indicated that boil advisories were issued when necessary while the Respondent checked to ensure proper chlorination had been achieved in its system.

A notice of hearing was issued on May 21, 2019 scheduling a telephonic hearing in this matter for July 2, 2019. A prehearing order was issued on May 24, 2019 addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The hearing was conducted as scheduled on July 2, 2019. Mr. and Ms. Bloom appeared *pro se* and Ms. Bloom testified on behalf of the Complainants. Attorney Samuel Falcone represented the Respondent which presented one witness. The initial hearing resulted in a transcript of 23 pages. The record closed on July 2, 2019 at the conclusion of the hearing. For the reasons set forth below, the complaint will be denied and dismissed.

#### FINDINGS OF FACT

1. The Complainants in this matter are Brenda and Michael Bloom.
2. The Respondent is Overbrook Water Company.
3. The Complainants receive water service from the Respondent at 62 Yeager Ave., Shavertown, Pennsylvania (service address).
4. The Complainants have lived at the service address for the last six years.  
N.T. 7.
5. The Complainants began to experience issues with their water service in March of 2018. N.T. 8.

6. The Complainants have experienced low water pressure, water main breaks and boil advisories. N.T. 7.

7. Before March of 2018 the Complainants had never received a boil advisory. N.T. 8.

8. Between March of 2019 and the date of hearing on July 2, 2019 the Complainants have experienced over ten instances of low water pressure and a water main break in May or June. N.T. 8.

9. The last time the Complainants' home was without water was in May 2019 when the Respondent was fixing a main break. N.T. 11.

10. Whenever there is a customer complaint or a water main break, there are efforts by the Respondent to make the necessary repairs. N.T. 11.

11. The Respondent has always responded to complaints about instances of no water. N.T. 11.

12. The Respondent's most recent repairs related to two or three main breaks in a row in the same section of a water main. N.T. 15.

13. Since the most recent repairs were made the Respondent's reservoir has remained full. N.T. 16.

14. The Respondent installed a pressure regulator to reduce the water pressure coming from the reservoir. N.T. 16.

15. The old pressure regulator was defective and allowed pressure to blow out leaks in older sections of pipe. N.T. 16.

16. The new pressure regulator became operational on June 28, 2019; this was the last date the Complainants experienced low water pressures in their home. N.T. 10-11, 16.

17. When a water issue is reported, the Respondent utilizes a leak locator to find any leaks. N.T. 16.

18. The Respondent has a water specialist who handles all boil advisories and utilizes methods of communication such as e-mail and hand delivery to notify customers of advisories. N.T. 17.

19. In January 2019 the Respondent began working with the Department of Environmental Protection and the Commission to address issues with its system. N.T. 17.

20. The Respondent has been working with the Commission to keep it informed of the status of its water lines and financial situation. N.T. 17.

21. The Respondent's work with the Commission has been through the Commission's Bureau of Investigation and Enforcement. N.T. 19-20.

### 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.

Here, the Complainants have raised allegations regarding the reasonableness and adequacy of the Respondent's water service. The Complainants therefore have the burden of proof to show that the water service they receive at their home is unreasonable or inadequate or otherwise violates the Public Utility Code.

The statute at 66 Pa. C.S. § 1501 governs allegations of unreasonable or inadequate service. Pursuant to 66 Pa. C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. 1977) aff'd, 420 A.2d 371 (Pa. 1977); Behrend v. Bell Telephone Co., 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. Analytical Laboratory Services, Inc. v. Metropolitan Edison Co., Docket No. C-2006608 (Order entered December 21, 2007); Emerald Art Glass v. Duquesne Light Co., Docket No. C-00015494 (Order entered June 14, 2002); Re: Metropolitan Edison Co., 80 Pa. PUC 662 (1993).

Ms. Bloom testified at the time of hearing regarding her experiences with the Respondent's water service. She did not recall any boil advisories prior to March 2018. N.T. 8. After March 2018, the Complainants experienced occasions of low water pressure, water main breaks and boil advisories. N.T. 7. Between March of 2019 and the date of hearing on July 2, 2019 the Complainants have experienced over ten instances of low water pressure and a water main break in May or June. N.T. 8. Ms. Bloom indicated that the last time her home was without water was in May 2019 when the Respondent was fixing a main break. N.T. 11.

There is no doubt that the Complainants have experienced the issues with their water service which Ms. Bloom described. In fact, the Respondent generally acknowledged that these issues had been occurring. However, the Respondent also provided testimony which indicated that it addresses each customer complaint it receives and any main breaks which are reported to it are repaired as needed.

The Respondent's most recent repairs related to two or three main breaks in a row in the same section of a water main. N.T. 15. Since those repairs were made the Respondent's reservoir has remained full. N.T. 16. The Respondent also installed a pressure regulator to reduce the water pressure coming from that reservoir. N.T. 16. The old pressure regulator was defective and allowed pressure to blow out leaks in older sections of pipe. N.T. 16. The new pressure regulator became operational on June 28, 2019 which was the last date the Complainants experienced low water pressures in their home. N.T. 10-11, 16.

The Complainants' concerns as a customer regarding these service issues are understandable. However, as noted above, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The mere fact that the Complainants have experienced such issues between March 2018 and March 2019, and even in the week prior to the hearing in this matter, does not evidence unreasonable or inadequate service by the Respondent. In Ms. Bloom's own testimony, she acknowledged that whenever there is a customer complaint or a water main break there are efforts by the Respondent to make the necessary repairs and the Respondent has always responded to complaints about instances of no water. N.T. 11. Such issues with the Complainants' water service have no doubt been frustrating during the time period in question, but the Complainants have failed to show that they rise to the level of unreasonable or inadequate service.

Therefore, the Complainants have failed to show that the Respondent has violated the Public Utility Code, a Commission Order or regulation or a Commission-approved company tariff with regard to the provision of water service to their residence.

By way of remedy, the Complainants made two requests: 1) that the Commission force the sale of the Respondent to a larger water utility, or 2) that the Commission subject the Respondent to fines. N.T. 8.

Because the Complainants have not shown that the Respondent has failed to provide reasonable and adequate service, there is no basis for which a fine may be imposed on the Respondent. With regard to the Complainants' request that the Commission force the sale of

the Respondent to a larger utility, such actions are governed by Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. Section 529 provides the Commission with the authority - after due process notice and the opportunity to be heard - to direct the acquisition of a small non-viable water or sewer company by a larger capable public utility. This process is initiated by an investigation proceeding which would be conducted in part by the Commission's Bureau of Investigation and Enforcement (I&E).

Here, the Respondent is already working in cooperation with I&E regarding some of the very same issues the Complainants have raised. Respondent began working with I&E in January 2019 and has informed the Commission of the status of their water lines and company financials. N.T. 17. Given that involvement, and the Complainants failure to show the Respondent has failed to provide reasonable or adequate service, there is insufficient basis to direct an investigation and/or sale of the Respondent as provided under Section 529 described above. The discretion to pursue such an investigation and make a possible recommendation to the Commission to proceed with a sale under Section 529 rests with I&E and their present involvement with the Respondent and its services.

Based on all of the above, the complaint is denied and dismissed.

#### 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. "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).

4. A utility is not required to provide constantly flawless, perfect or the best possible service but rather reasonable and adequate service. 66 Pa. C.S. § 1501; Analytical Laboratory Services, Inc. v. Metropolitan Edison Co., Docket No. C-2006608 (Order entered December 21, 2007).

5. The Complainants have failed to show that the Respondent has violated any provision of the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Michael and Brenda Bloom against Overbrook Water Company at Docket No. C-2019-3008683 is hereby denied and dismissed.

2. That the docket at Docket No. C-2019-3008683 is marked closed.

Date: September 13, 2019

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/s/  
Benjamin J. Myers  
Administrative Law Judge