

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dorothy Bruzgo	:	
	:	
v.	:	C-2019-3008258
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision dismisses a Complaint filed by a customer of a water company who averred that the company was not providing reasonable service because her water system was overworked beyond its capacity, resulting in frequent foul odors. The Complaint is dismissed because the customer failed to demonstrate that the company failed to provide reasonable service, or 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 February 25, 2019, Dorothy Bruzgo (Ms. Bruzgo or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Aqua Pennsylvania Wastewater, Inc. (Aqua), at Docket Number C-2019-3008258. In the Complaint, Ms. Bruzgo asserted that Aqua was not providing reasonable service because her water system was overworked beyond its capacity, resulting in frequent foul odors. In the Requested Relief portion of the Complaint, Ms. Bruzgo requested that the Commission compel Aqua to replace

and upgrade certain equipment leading to her house. The Complaint was served on Aqua by the Commission on March 5, 2019.

On March 25, 2019, Aqua filed an Answer to the Complaint. In its Answer, Aqua denied the various averments made by Ms. Bruzgo and requested that the Complaint be dismissed.

By Telephonic Hearing Notice dated March 29, 2019, an Initial Telephonic Hearing was scheduled for this matter on May 2, 2019 at 10:00 a.m. and I was assigned as the Presiding Officer. Aqua requested a continuance of that hearing, and since the request was not opposed by Ms. Bruzgo, I granted the continuance. A new Hearing Notice was sent to the parties on April 24, 2019, rescheduling an Initial Telephonic Hearing for this matter on June 4, 2019 at 10:00 a.m. A Prehearing Order was issued on May 23, 2019, setting forth various rules governing the upcoming hearing.

The hearing convened on June 4, 2019, as scheduled. Ms. Bruzgo appeared *pro se*. Mary McFall Hopper, Esquire, appeared on behalf of Aqua. Ms. Bruzgo provided testimony to support her Complaint and sponsored one exhibit that was entered into the record. Ms. Hopper presented two witnesses who sponsored four exhibits which were entered into the record. A transcript of the hearing totaling 68 pages was made. The record in this proceeding closed on July 11, 2019 when the transcript was filed with the Commission.

The Complaint is ready for disposition. For the reasons discussed below, the Complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Dorothy Bruzgo.
2. The Respondent in this case is Aqua Pennsylvania Wastewater, Inc.
3. The service address is 31 Crest Drive, Lake Harmony, PA 18624.

4. Ms. Bruzgo stated that she has had wastewater service with Aqua at the service address since 1987. Tr. 11.

5. Ms. Bruzgo stated that she started complaining to Aqua about the quality of her wastewater service around 2004. Tr. 11.

6. Aqua did not begin providing wastewater service to Ms. Bruzgo's township until 2006. Tr. 36, 37.

7. Aqua later acquired Mr. Bruzgo's township's wastewater system in 2012 by filing an application that was approved by the Pennsylvania Public Utility Commission. Tr. 36, 37.

8. Ms. Bruzgo's complaints to Aqua have been about odors coming from Aqua's wastewater system at the service address. Tr. 13, 14.

9. Ms. Bruzgo noticed that the odors are at their peak during the months of May, June, July and August. Tr. 14.

10. Ms. Bruzgo noticed that starting in September and October, the odors are less noticeable. Tr. 14.

11. During the months of May, June, July and August, the owners at Ms. Bruzgo's development have parties frequently. Tr. 15.

12. During the months of May, June, July and August, there are a number of porta potties placed on the grounds of the park near Ms. Bruzgo's development. Tr. 15.

13. Ms. Bruzgo's township contracted with Aqua in 2006 to begin providing wastewater service to the township. Tr. 36, 37.

14. Aqua acquired Ms. Bruzgo's township's wastewater system in 2012 by filing an application that was approved by the Pennsylvania Public Utility Commission. Tr. 36, 37.

15. Aqua Exhibit 2 is a welcome letter from Aqua to residents of Ms. Bruzgo's township explaining that Aqua had acquired the township's wastewater system. Tr. 38.

16. The welcome letter in Exhibit 2 has an attachment entitled "Grinder Pumps – Do's and Don'ts." Tr. 38.

17. Ms. Bruzgo's home has a grinder pump installed at her home. Tr. 8, 11, 12.

18. The grinder pump is owned by Ms. Bruzgo and not by Aqua. Tr. 41.

19. Aqua owns the mains, the manholes and the customer connection from the sewer main up to the curb line. Tr. 41.

20. Ms. Bruzgo contacted Aqua numerous times regarding odors on her property and each time Aqua sent employees to the property to investigate. Tr. 42.

21. Each time Aqua responded to one of Ms. Bruzgo's complaints, its employees were unable to detect any odors at Ms. Bruzgo's property or at Aqua's facilities that serve Ms. Bruzgo's property. Tr. 42, 59, 62.

22. Aqua does not own the porta potties near Ms. Bruzgo's development. Tr. 42, 43.

23. Aqua does not treat any of the porta potties near Ms. Bruzgo's development. Tr. 43.

24. All obligations to treat and dispose of waste from the porta potties near Ms. Bruzgo's development are on the owner of the porta potties. Tr. 43.

25. Aqua's Lake Harmony wastewater treatment plant currently has more than enough capacity to treat all of the waste generated by residents who are serviced by that plant. Tr. 47.

26. Aqua is currently renovating its Lake Harmony wastewater treatment plant and will spend approximately 5 million dollars on that project. Tr. 48.

27. Ms. Bruzgo's Exhibit C-1 is a Docket from the Delaware River Basin Commission. Exhibit C-1; Tr. 49, 50.

28. Exhibit C-1 does not state that Aqua is violating that Docket or any other laws or regulations. Tr. 50.

29. Robert Soltis has been employed by Aqua since 2006 and currently works for Aqua as a wastewater operation team leader. Tr. 58.

30. Mr. Soltis has personally met with Ms. Bruzgo on a number of occasions and has never found any odor at any time that he was present at Ms. Bruzgo's development. Tr. 59.

31. Mr. Soltis met with Ms. Bruzgo approximately two years prior to the hearing in this case, along with the sewage enforcement officer from Ms. Bruzgo's township and an employee of the Pennsylvania Department of Environmental Protection. Tr. 63.

32. During that particular meeting, Mr. Soltis did not notice any odors complained of by Ms. Bruzgo. Tr. 63.

33. During that particular meeting, no one else reported any odors. Tr. 63.

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). 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. "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).

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 the 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).

Public utilities are required to provide reasonable service to their customers. In that regard, Section 1501 of the Public Utility Code provides, in pertinent part 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 interruption or delay. . . .

66 Pa.C.S. § 1501. Of note, Section 1501 does not require utilities to provide constant service - only reasonably continuous service without unreasonable interruption or delay.

In the case of In Re Metropolitan Edison Company, 80 Pa. PUC 662 (1993), *rev'd on other grounds*, Popowsky v. Pa. Pub. Util. Comm'n, 653 A.2d 1385 (Pa. Cmwlth. 1995), the Commission adopted the Recommended Decision of Administrative Law Judge John H. Corbert, Jr., as its action in a similar case. In his Decision, ALJ Corbett stated: "The Code only requires a public utility to furnish *reasonable* service. It does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of

either perfect service or the best possible service." Id. at 672 (emphasis in original; citation omitted); *see also*, Niksa v. West Penn Power Co., Docket Number C-00992819 (Initial Decision at 10, Feb. 11, 2000, Final Order entered March 27, 2000) (Niksa) ("If this were a perfect world equipment would never fail and electric service would never be interrupted."); Curley v. Pennsylvania Electric Company, Docket Number C-2013-2351468 (Initial Decision July 18, 2014, Final Order entered Sept. 15, 2014)).

In this case, Ms. Bruzgo stated that she has had wastewater service with Aqua at the service address since 1987. Tr. 11. Ms. Bruzgo stated that she started complaining to Aqua about the quality of her wastewater service around 2004. Tr. 11. Ms. Bruzgo's complaints to Aqua have been about odors coming from Aqua's wastewater system at the service address. Tr. 13, 14. Ms. Bruzgo noticed that the odors are at their peak during the months of May, June, July and August. Tr. 14. Ms. Bruzgo noticed that starting in September and October, the odors are less noticeable. Tr. 14. During the months of May, June, July and August, the owners at Ms. Bruzgo's development have parties frequently. Tr. 15. During the months of May, June, July and August, there are a number of porta potties placed on the grounds of the park near Ms. Bruzgo's development. Tr. 15. Ms. Bruzgo contends that Aqua's wastewater service is deficient because its treatment plant is operating beyond its capacity and has requested that the Commission require Aqua to construct new facilities to deal with the odor problems. Tr. 23.

In response, Aqua's witnesses testified that Ms. Bruzgo's township contracted with Aqua in 2006 to begin providing wastewater service to the township. Tr. 36, 37. Aqua later acquired Mr. Bruzgo's township's wastewater system in 2012 by filing an application that was approved by the Pennsylvania Public Utility Commission. Tr. 36, 37. Aqua then sent a welcome letter from Aqua to residents of Ms. Bruzgo's township explaining that Aqua had acquired the township's wastewater system and reminding the residents of how to operate their grinder pumps if they have one. Tr. 38.

Ms. Bruzgo acknowledged that she has a grinder pump installed at her home. Tr. 8, 11, 12. Aqua's witnesses testified that the grinder pump is owned by Ms. Bruzgo and not by Aqua. Tr. 41. Aqua's witnesses also testified that Aqua owns the mains, the manholes and the customer connection from the sewer main up to the curb line. Tr. 41.

Aqua's witnesses also testified that Ms. Bruzgo has contacted Aqua many times regarding odors on her property and each time Aqua sent employees to the property to investigate. Tr. 42. Each time Aqua responded to one of Ms. Bruzgo's complaints, its employees were unable to detect any odors at Ms. Bruzgo's property or at Aqua's facilities that serve Ms. Bruzgo's property. Tr. 42, 59, 62.

Aqua's witnesses further testified that Aqua does not own the porta potties near Ms. Bruzgo's development, nor does Aqua treat any of the porta potties near Ms. Bruzgo's development. Tr. 42, 43. All obligations to treat and dispose of waste from the porta potties near Ms. Bruzgo's development are on the owner of the porta potties. Tr. 43.

Aqua's witnesses noted that Aqua's Lake Harmony wastewater treatment plant currently has more than enough capacity to treat all of the waste generated by residents who are serviced by that plant. Tr. 47. Additionally, Aqua is currently renovating its Lake Harmony wastewater treatment plant and will spend approximately 5 million dollars on that project. Tr. 48.

Robert Soltis has been employed by Aqua since 2006 and currently works for Aqua as a wastewater operation team leader. Tr. 58. Mr. Soltis has personally met with Ms. Bruzgo on a number of occasions and has never found any odor at any time that he was present at Ms. Bruzgo's development. Tr. 59. Additionally, Mr. Soltis met with Ms. Bruzgo approximately two years prior to the hearing in this case, along with the sewage enforcement officer from Ms. Bruzgo's township and an employee of the Pennsylvania Department of Environmental Protection. Tr. 63. During that particular meeting, Mr. Soltis did not notice any odors complained of by Ms. Bruzgo. Tr. 63. During that particular meeting, no one else reported any odors. Tr. 63

Aqua concluded its testimony by noting that Ms. Bruzgo's Exhibit C-1 is a Docket from the Delaware River Basin Commission. Exhibit C-1; Tr. 49, 50. Aqua's witnesses testified that Exhibit C-1 does not state that Aqua is violating that Docket or any other laws or regulations. Tr. 50.

Given the record evidence, Ms. Bruzgo has failed to meet her burden of proof to show that Aqua is failing to provide reasonable wastewater service, or that Aqua is otherwise

violating any Commission Order, Regulation or provision of the Public Utility Code. Although Ms. Bruzgo testified that she regularly notices foul odors at her service address, Aqua's witnesses credibly testified that they have personally visited the premises numerous times and have never noticed any odors while on site. Aqua's witnesses also testified that they visited the site with Ms. Bruzgo, township officials and state environmental officials and that no one noticed any odors during that particular visit.

Aqua's witnesses also testified that Aqua has no obligations with respect to the porta potties that are placed on a park ground near Ms. Bruzgo's home during the summer months when Ms. Bruzgo's development experiences many additional visitors. Ms. Bruzgo herself acknowledged that the odors are more noticeable in the summer months when the additional visitors and homeowners are having parties frequently.

Aqua's witnesses also testified that Aqua's current treatment facilities are more than adequate to handle the wastewater demand in Ms. Bruzgo's service area, and that Aqua is upgrading those facilities over the next several years at an estimated cost of 5 million dollars.

Ms. Bruzgo did not produce any additional evidence to refute the evidence set forth by Aqua in this case. Instead, she continued to assert that there are odors at her service address while implying or stating that the Aqua witnesses were not being honest. Although Ms. Bruzgo seems firmly convinced that there are prevalent odors at her residence, she has failed to produce competent evidence that there are such odors, or that any such odors might be attributable to Aqua's failure to provide reasonable service. To the extent that any odors may occur, Aqua's witnesses established that they may be attributable to the increased summer visitor activity or to Ms. Bruzgo's grinder pump. In any event, it is not Aqua's burden of proof to explain why any odors may be occurring; instead, it is Ms. Bruzgo's burden of proof to demonstrate that there are odors and that Aqua is responsible for those odors. Therefore, Ms. Bruzgo has failed to demonstrate, through competent record evidence, that Aqua has failed to provide reasonable service, or that the actions of Aqua otherwise violated the Public Utility Code, a Commission Order or Regulation or a Commission-approved company Tariff with regard to the provision of service to her.

Given that Ms. Bruzgo has failed to meet her burden of proof in this case, the Complaint in this matter is hereby dismissed. An appropriate Order shall follow below.

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).

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. Public utilities are required to provide reasonable service to their customers. 66 Pa. C.S.A. § 1501.

6. The Public Utility Code only requires a public utility to furnish reasonable service - it does not mandate perfect service nor must a public utility provide the best possible service. In Re Metropolitan Edison Company, 80 Pa. PUC 662 (1993), *rev'd on other grounds*, Popowsky v. Pa. Pub. Util. Comm'n, 653 A.2d 1385 (Pa.Cmwlth. 1995).

7. The Complainant has failed to satisfy her burden of proof in this proceeding to demonstrate that Aqua failed to provide her with reasonable service, or that Aqua

