

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeremy Green	:	
	:	
v.	:	C-2019-3013332
	:	
Peoples Natural Gas Company, LLC	:	

**INITIAL DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

The formal complaint alleging a reliability, quality or safety problem with gas utility service, specifically that a gas utility refused to check for gas leaks or carbon monoxide inside a home he recently purchased, after the gas service was transferred, is denied, because Complainant failed to carry his burden of proof.

**HISTORY OF THE PROCEEDING**

On September 26, 2019, Jeremy P. Green (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Peoples Natural Gas Company, LLC (Peoples or Respondent) alleging a reliability, safety or quality problem with his utility service. Specifically, Complainant alleges that Peoples refused to check for a gas leak or carbon monoxide inside the home when he purchased a home because the gas was never shut off to the home, and it was not Peoples policy to check for gas leaks or carbon monoxide where there was a transfer of gas utility service. As relief, Complainant requests that Peoples' policy be changed so that Peoples is required to check for gas leaks and carbon monoxide when a customer

suspects a safety concern or when new service starts. On October 23, 2019, Peoples filed an answer to the complaint requesting that the complaint be dismissed.

On October 23, 2019, a Call-In Telephone Hearing Notice was issued scheduling an initial telephone hearing for Wednesday, December 4, 2019. On October 25, 2019, a Prehearing Order was issued by the undersigned setting forth the date for the scheduled hearing as well as certain procedures to be followed by the parties in this proceeding.

A telephone hearing was held as scheduled. Complainant appeared *pro se* and testified on his own behalf. He did not offer any exhibits into evidence. Jennifer Petrisek, Esquire, represented Peoples. Peoples presented one witness, Kristen McGinty, and offered one exhibit that was marked and admitted as Peoples Exhibit A.

The hearing record consists of a 32-page transcript of the telephone hearing and Peoples Exhibit A. The record was closed by interim order on January 2, 2020.

#### FINDINGS OF FACT

1. Complainant, Jeremy Green, resides at 130 Carl Avenue, Butler, Pennsylvania 16001 (the service address) (Tr. 9).

2. Respondent, Peoples Natural Gas Company LLC, provides residential gas service to Complainant at the service address (Tr. 9).

3. On June 19, 2019, Complainant contacted Peoples to establish an account for gas service at the service address (Tr. 14).

4. Gas service was being provided to the service address when Complainant contacted Peoples to establish an account on June 19, 2019 (Tr. 15).

5. On June 25, 2019, gas service to the service address was transferred to an account created for Complainant (Tr. 14-15).

6. On June 26, 2019, Complainant contacted Peoples to confirm that an account for service was established in his name and to inquire why a service technician did not visit the property before service was placed in his name (Tr. 15).

7. On June 26, 2019, Peoples explained to Complainant that a serviceman was not sent to the property before service was established in his name because gas was continuously flowing to the meter at the service address, so Peoples read the meter and transferred service into Complainant's name (Tr. 15).

8. On June 26, 2019, Complainant informed Peoples that he had concerns about the gas appliances at the service address leaking gas and he advised that the property had been vacant for six months (Tr. 10, 15).

9. On June 26, 2019, Peoples advised Complainant to contact a plumber or appliance specialist to have the appliances checked to make sure they were safe (Tr. 15).

10. On June 26, 2019, Complainant did not inform Peoples that he smelled an odor of gas or that he suspected the service address had an issue with carbon monoxide (Tr. 15-16, 22).

11. On August 22, 2019, Complainant called Peoples for a second time raising concerns about the appliances in the home, which had been vacant for six months. He inquired again about whether a serviceman would be dispatched to the property (Tr. 15).

12. On August 22, 2019, a Peoples service technician spoke to Complainant on the telephone and asked Complainant if there was an odor of gas, and Complainant responded

to the technician there was no odor and that none of his gas appliances were turned on (Tr. 15-16, 23).

13. On August 22, 2019, Complainant did not inform Peoples that he had symptoms related to carbon monoxide exposure (Tr. 16).

14. If gas is continuously flowing to a meter and service has not been terminated, Peoples policy is there is no need to visit the service address when service is transferred to a new ratepayer (Tr. 15, 20-21).

15. If Peoples receives a call from a service location complaining of an odor of gas or symptoms consistent with exposure to carbon monoxide, Peoples sends a service technician to the property (Tr. 22).

16. When Peoples dispatches a service technician to a property after receiving a complaint about an odor of gas or carbon monoxide symptoms, the technician isolates the issue, shuts off the appliance if there is a concern with an appliance, and then refers the customer to a plumber or an appliance specialist because Peoples does not make repairs to appliances (Tr. 25).

17. Peoples owns and is responsible for maintaining the saddle or tap on its pipeline facilities, the connection between the tap and the curb or customer's property line, the stop cock and service box, the regulators and any excess-pressure protective devices and the meter. The customer owns and is responsible for maintaining all other facilities and equipment required for his/her gas service (Tr. 17-18; Exhibit A).

#### DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to

administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701. A person seeking affirmative relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, a Complainant must show that Respondent is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218, 221-222, 578 A.2d 600, 602 (1990), *app. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

A Complainant must initially produce sufficient credible evidence to establish a *prima facie* case in order that Complainant not lose summarily. *Morrissey v. Dep't of Highways*, 424 Pa. 87, 225 A.2d 895 (1967). If Complainant does so, the burden of going forward with evidence shifts to Respondent to produce credible evidence of at least co-equal weight. This burden of going forward with evidence may shift back and forth between the parties, but the ultimate burden of persuasion remains with Complainants. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982), *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993), 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't of Public Welfare*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

In this case, Complainant contends that Peoples should have sent a service technician to his property as part of the process of transferring gas service to him for the purpose of inspecting the gas lines and appliances for leaks and safety issues. Complainant believes Peoples should change its policy and visit properties that have been vacant even if service to the property was active at the time new service was requested.

Peoples asserts that it followed its policy and did not violate the Code, Commission regulations, Commission orders or its filed tariff when it transferred gas service to Complainant without first sending a service technician to the property. In support of its actions at the time service was transferred, Peoples asserts that gas service was active to the service address when it was transferred to Complainant. Also, Complainant did not complain that he smelled an odor of gas or had symptoms of carbon monoxide when he contacted Peoples to establish service, on June 26, 2019, or on August 22, 2019. Complainant was advised to contact a plumber or an appliance specialist if he had concerns about the facilities or appliances he owned. In addition, Complainant advised Peoples that the appliances at the service address were not turned on.

Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ. 66 Pa.C.S. § 1505.

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984). Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] 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.

*Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness. *Thurby v. West Penn Power Company*, C-2011-2254048 (Order April 4, 2013); *Bertsch v. PPL Electric Utilities Corp.*, C-2011-2251784 (Final Order April 2, 2012); *Scherich v. Verizon Pennsylvania Inc.*, Docket No. C-2008-2061244 (Final Order entered January 28, 2010).

“It is well settled that the provisions of a Commission-approved tariff have the force and effect of law and are binding on both the utility and its customers. Tariff provisions approved by the Commission are *prima facie* reasonable.” *Escalera v. Columbia Gas of Pennsylvania, Inc.* (Docket No. C-2013-2368514) 2013 Pa. PUC LEXIS 787 (Initial Decision, *affirmed* by Opinion and Order June 5, 2014)(citing *Stiteler v. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa. Cmwlth 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth 1981); *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth 1991).

According to Peoples' Commission-approved tariff, Peoples owns and is responsible for maintaining the saddle or tap on its pipeline facilities, the connection between the tap and the curb or customer's property line, the stop cock and service box, the regulators and any excess-pressure protective devices and the meter. The customer owns and is responsible for maintaining all other facilities and equipment required for his/her gas service. Tr. 17-18; Exhibit A.

Complainant owns the appliances and gas lines located within the home at the service address. Pursuant to Peoples' tariff, Complainant is responsible for these appliances and gas lines. When Complainant called to establish service, gas service was already active for the service address and Peoples transferred service to him after reading the meter. When

Complainant called Peoples to establish service, and when he made subsequent calls on June 26, 2019 and August 22, 2019, he did not advise Peoples that he smelled an odor of gas or that he had symptoms consistent with carbon monoxide exposure. Complainant informed Peoples that the appliances at the service address were not turned on when he called on August 22, 2019, roughly two months after the account for service had been transferred. Peoples properly advised Complainant to contact a plumber or an appliance specialist if he had concerns under the circumstances. If Complainant had advised Peoples that he smelled an odor of gas or that he was experiencing symptoms consistent with carbon monoxide exposure, Peoples would have dispatched a service technician to the property.

Complainant has failed to carry his burden of proof in this proceeding. He has failed to prove that Peoples violated the Code, Commission regulations or any order of the Commission when it transferred service to him in this case. Accordingly, the complaint will be denied in the ordering paragraphs to follow.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this complaint. 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 public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. § 1501.

4. It is well settled that the provisions of a Commission-approved tariff have the force and effect of law and are binding on both the utility and its customers. Tariff provisions approved by the Commission are *prima facie* reasonable.” *Escalera v. Columbia Gas of*

*Pennsylvania, Inc.* (Docket No. C-2013-2368514) 2013 Pa.PUC LEXIS 787 (Initial Decision, affirmed by Opinion and Order June 5, 2014)(citing *Stiteler v. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa. Cmwlth 1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth 1981); *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Cmwlth 1991)).

5. Complainant has failed to meet his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Jeremy Green against Peoples Natural Gas Company, LLC at Docket No. C-2019-3013332, is denied.
2. That the record at Docket No. C-2019-3013332 be marked closed.

Date: April 6, 2020

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/s/  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge