

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen A. Golden and Gregory A. Kopiak, Jr.	:	
	:	
v.	:	C-2019-3012694
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision denies a formal complaint filed by customers of a natural gas distribution company who averred that the company caused water to infiltrate their basement as a result of the work the company performed outside of their home. The complaint will be dismissed because the complainants failed to satisfy their burden of proving that the company caused water to enter their basement or otherwise violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company in any manner.

HISTORY OF THE PROCEEDING

On September 4, 2019, Kathleen A. Golden and Gregory A. Kopiak, Jr. filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI), docket number C-2019-3012694. Ms. Golden is Mr. Kopiak’s mother. In their complaint, Ms. Golden and Mr. Kopiak indicated that they were having a reliability, safety or quality problem with their utility service and provided an attachment with additional details regarding the problem. In the attachment, Ms. Golden and Mr. Kopiak explained that Ms.

Golden is the property owner of a single-family residence at 36 Sheridan Street in Wilke Barre that is serviced by UGI for natural gas service and Pennsylvania-American Water Company (PAWC) for water service. The attachment explained that there is continuing property damage caused by UGI and/or PAWC resulting from suspected improper excavation and grading for infrastructure work performed by UGI and PAWC. Ms. Golden and Mr. Kopiak seek an order from the Commission directing “PAWC and/or UGI to perform an investigation to determine the cause and source of the water intrusion into [their] basement and an order to correct and repair the damage if it is determined that it was caused by the utilities.” Ms. Golden and Mr. Kopiak attached various pictures to their complaint in support of their position.

On September 12, 2019, UGI filed an answer to the complaint. In its answer, UGI affirmed or denied the various averments made in the complaint. In particular, UGI denied that it caused any property damage to Ms. Golden and Mr. Kopiak’s residence, but noted that, on December 19, 2017, the company was excavating outside the street at 27 Sheridan Street to fix a leak and renew service for that property, adding that the work performed at 27 Sheridan Street is approximately 95 feet from 36 Sheridan Street.

On December 9, 2019, the Commission issued a hearing notice scheduling an initial call-in telephone hearing for this matter for Thursday, January 9, 2020 and assigning me as the presiding officer. A prehearing order dated December 9, 2019 was issued setting forth various procedural rules that would govern that hearing. On January 7, 2020, a subsequent hearing notice was issued rescheduling the January 9, 2020 hearing to January 23, 2020.

The hearing convened on January 23, 2020, as scheduled. Administrative Law Judge Andrew M. Calvelli presided due to unforeseen circumstances with the undersigned’s schedule. Ms. Golden and Mr. Kopiak appeared unrepresented, both provided oral testimony and sponsored one exhibit that was admitted into the record. Jorge Pereira, Esquire, appeared on behalf of UGI and presented one witness who sponsored four exhibits that were admitted into the record. A transcript of 55 pages was created.

The record closed on February 18, 2020, the day the transcript of the hearing was submitted to the Commission. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The complainants in this case are Kathleen A. Golden and Gregory A. Kopyak, Jr.
2. The respondent in this case is UGI Utilities Inc.
3. The service address is 36 Sheridan Street, Wilke Barre, Pa.
4. On February 7, 2018, Mr. Kopyak was living at the service address when he noticed water coming from the wall in the basement. Tr. 14, 17.
5. There was construction work done on the road behind the service address in December 2017. Tr. 15.
6. There is still water coming into the basement at the service address. Tr. 24.
7. Complainant Exhibit Number 1 is the complaint filed by Ms. Golden and Mr. Kopyak on September 4, 2019, along with the accompanying attachments. Tr. 26-27; Exh. C-1.
8. PAWC sent technicians to the service address to help clean the basement using fans and dehumidifiers, among other things. Tr. 35-36.
9. Ms. Golden and Mr. Kopyak have also filed a complaint against PAWC regarding water that entered their basement. Tr. 13.
10. Robert Judge is the manager of operations in the Wilke-Barre area overseeing and managing all operations pertaining to UGI's gas facilities. Tr. 40-41.

11. UGI was performing work on Joseph Lane behind Ms. Golden and Mr. Kopiak's house and at 27 Sheridan Street opposite from Ms. Golden and Mr. Kopiak's house in December of 2017. Tr. 41-42.

12. 27 Sheridan Street is approximately 65 linear feet away from 36 Sheridan St. Tr. 42.

13. UGI was fixing a leak on the service at 27 Sheridan Street. Tr. 43.

14. UGI did no other work on Sheridan Street in 2017. Tr. 43.

15. UGI did no work in front of 36 Sheridan Street in 2018. Tr. 43.

16. Mr. Judge is not aware of any instance where UGI and PAWC would be working together. Tr. 43.

17. UGI Exhibit Number 1 is a photograph of 27 Sheridan Street showing UGI's excavations and restorations in front of that house. Tr. 44; UGI Exh. No. 1.

18. UGI Exhibit Number 2 is a photograph of the work done in front of 27 Sheridan Street with 36 Sheridan Street in the background showing the proximity of the service address to the excavation in front of 27 Sheridan Street. Tr. 45; UGI Exh. No. 2.

19. UGI Exhibit Number 2 was taken on July 3, 2018, approximately six months after Ms. Golden and Mr. Kopiak complained of water entering their basement. Tr. 46.

20. UGI Exhibit Number 3 is a UGI service record for 27 Sheridan Street showing the work UGI performed at that address. Tr. 46-48; UGI Exh. No. 3.

21. UGI used the least intrusive equipment to perform the excavation at 27 Sheridan Street. Tr. 49.

22. UGI Exhibit Number 4 is a digital version of the work performed by UGI at 27 Sheridan Street in December 2017. Tr. 49; UGI Exh. No. 4.

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) (Patterson). “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). 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. Golden and Mr. Kopiak seek an order from the Commission directing “PAWC and/or UGI to perform an investigation to determine the cause and source of the water intrusion into [their] basement and an order to correct and repair the damage if it is determined that it was caused by the utilities.” Ms. Golden and Mr. Kopiak, therefore, have 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); *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).

In this case, Ms. Golden and Mr. Kopiak, mother and son, aver that construction activities by “PAWC and/or UGI” have caused water to enter their basement. In support of their complaint, Ms. Golden and Mr. Kopiak submitted various pictures of their basement and the outside of their home. In response, UGI presented the testimony of Robert Judge, the manager of operations in the Wilkes-Barre area for UGI, who testified that UGI was not performing any work in the area of the service address.

The complaint will be dismissed because Ms. Golden and Mr. Kopiak have failed to satisfy their burden of proving that UGI caused water to enter their basement or otherwise violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided to them.

Ms. Golden and Mr. Kopiak have not provided sufficient evidence to prove that the water infiltrated their basement as a result of any action, or inaction, by UGI. In fact, it is unclear whether water infiltrated their basement as a result of actions or inactions by UGI or PAWC. Mr. Kopiak testified “on December 19th they were out, PUC – not PUC, UGI who was digging out in front of our neighbor’s house.” Tr. 16. UGI witness Judge recognized that UGI was repairing service to a neighbor at 27 Sheridan Street on that date but that work was 65 linear feet from 36 Sheridan Street and in no way could have caused water to infiltrate Ms. Golden and Mr. Kopiak’s basement. Tr. 42. Ms. Golden and Mr. Kopiak have failed to prove that work performed 65 linear feet away caused water to infiltrate the basement at the service address.

Even the pictures that Ms. Golden and Mr. Kopiak attached to their complaint do not prove that UGI violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. The pictures demonstrate damage to the front porch foundation and the basement, among other things. Tr. 26; Exh C-1. The pictures do not,

however, show that such damage was caused by UGI. Nor have Ms. Golden and Mr. Kopiak presented any other evidence that UGI caused the water to infiltrate their basement.

Furthermore, Mr. Kopiak testified, during cross-examination, that both UGI and PAWC were doing work in the area. Tr. 31-32. Mr. Kopiak provided extensive testimony during the hearing regarding his efforts to resolve this matter with PAWC. Tr. 20-23, 35-39. Mr. Kopiak testified that he filed a separate complaint regarding the matter against PAWC and attempted to settle the matter but was unable to do so. Tr. 23-24. Notably, during cross examination, Mr. Kopiak testified that PAWC admitted it caused the problem. Mr. Kopiak testified:

Q. Now, I'm looking at your complaint. You say that PAWC admits to – or in the letter that you attach to your complaint you say that PAWC admits to the wrongdoing by offering to my damaged personal contents and installing the sump pump but refused to perform the necessary investigation and work to resolve the root replace cause of the water intrusion?

A. Correct.

Q. Okay. So in your mind you believe that PAWC admitted that they caused the problem; is that correct?

A. Correct.

Tr. 39.

In contrast, Mr. Judge testified regarding the details of the work performed by UGI at 27 Sheridan Street. Tr. 43. Mr. Judge sponsored two exhibits that each include a photograph. UGI Exhibit Number 2 clearly shows the distance from the work performed in front of 27 Sheridan Street and the service address at 36 Sheridan Street. UGI Exh. No. 2. It is clear that the work performed by UGI at 27 Sheridan Street could not have caused water to infiltrate the basement at the service address due to the distance between the two locations. Mr. Judge added that UGI did not perform any work in front of 36 Sheridan Street during that year. Tr. 46. Mr. Judge credibly testified that UGI was “in no way responsible for any damage or any water that would be damaging house number 36 Sheridan Street.” Tr. 51.

Ms. Golden and Mr. Kopiak have the burden of proof in this proceeding to prove that UGI caused the problem which they complain of and they must satisfy that burden by a preponderance of the evidence. They have not done so in this proceeding and, in fact, Mr. Kopiak testified that he believed PAWC claimed responsibility for the damage. PAWC is not a party to this proceeding, thus any allegations made toward PAWC must be addressed in the formal complaint filed against PAWC. For purposes of this case, Ms. Golden and Mr. Kopiak have not shown that UGI is responsible for the damage complained of in the complaint. As noted above, Ms. Golden or Mr. Kopiak have not provided any evidence that UGI has caused the damage complained of in the complaint. Therefore, their complaint must be dismissed.

In conclusion, the formal complaint filed by Ms. Golden and Mr. Kopiak must be dismissed because the complainants failed to satisfy their burden to prove that UGI caused water to infiltrate their basement or otherwise in anyway violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided. Ms. Golden and Mr. Kopiak have not shown that UGI is responsible or accountable for the problem described in the complaint in order to prevail. *See, Patterson, supra.*

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. Ms. Golden and Mr. Kopiak have failed to satisfy their burden of proving that UGI has violated the Public Utility Code, a Commission order or regulation or a Commission approved tariff of the company with regard to the service provided to them.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Kathleen A. Golden and Gregory A. Kopiak, Jr. against UGI Utilities, Inc. at docket number C-2019-3012694 on September 4, 2019 is denied.
2. That this complaint be marked closed.

Date: April 27, 2020

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