

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Debra Lindler	:	
	:	
v.	:	C-2019-3012938
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This initial decision dismisses the Complainant’s formal Complaint as she was not able to meet her burden of establishing that the Company provided her with unsafe, inadequate, or unreasonable service.

HISTORY OF THE PROCEEDING

On September 9, 2019, Debra Lindler (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against the Philadelphia Gas Works (PGW or Respondent). In the Complaint, Ms. Lindler alleged that there had been damages caused to her property by PGW when they were completing line work in front of her residence. The Complainant requested damages for the repair work that she needed for her home.

On October 9, 2019, PGW filed an Answer, denying the material allegations of the Complaint. On the same date, PGW also filed Preliminary Objections, which stated that the

Complainant's request for damages should be struck from the Complaint as an impertinent matter.

On November 14, 2019, the Complainant filed an Answer and New Matter to the Preliminary Objections.

The Complaint is an untimely appeal of a decision of the Bureau of Consumer Services (BCS) at Case No. 3704799 dated August 13, 2019, which denied the Complainant's informal Complaint and found that the Commission cannot award monetary damages.

On November 26, 2019, a Hearing Notice was issued for an initial in-person hearing on Friday, January 17, 2020, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 2, 2019, which provided the parties with the procedures for the hearing.

On January 16, 2020, I issued an Order which granted the Preliminary Objections in part and denied them in part. I struck the Complainant's request for monetary damages from the Complaint. However, I indicated that matter would move forward on the Complainant's allegations that PGW failed to provide adequate, safe and reasonable service.

The hearing convened as scheduled on January 17, 2020. The Complainant represented herself and testified on her own behalf. Ms. Lindler also presented the testimony of her daughter, Akilah Lindler. Complainant presented three exhibits, which were entered into the record at the hearing. PGW was represented by counsel, Graciela Christlieb, Esquire. PGW also presented the testimony of the following individuals: Jessica Glace, a Customer Review Officer; John Damiano, a Field Service Technician; and Serge Mois, a Claims and Litigation Specialist. PGW offered four exhibits which were entered into the record.

The record closed on February 13, 2020, when I received my copy of the 101-page hearing transcript.

FINDINGS OF FACT

1. The Complainant is Debra Lindler, who owns 1344 South Newkirk Street, Philadelphia, Pennsylvania 19146 (Service Address). Tr. 8-9.
2. The Respondent is Philadelphia Gas Works.
3. On September 14, 2018, the Complainant received a pamphlet in her door that indicated she would need to contact PGW to have gas service restored to her home. Tr. 9.
4. On the same date, the Complainant called PGW and PGW sent a technician to her premises to turn on her gas service. Tr. 9-10.
5. The Complainant found flooding in her basement on September 14, 2018. Tr. 9-10.
6. PGW was performing work in the street in front of the Complainant's residence and left a patch on the sidewalk. Tr. 11.
7. In 2019, a contractor for PGW, JDM Materials Company (JDM), was working on the Complainant's street. Tr. 14.
8. The Complainant found damage on her parking poles¹ after JDM was working on her street. Tr. 14.
9. The Complainant did not see the JDM truck damage her parking poles. Tr. 14.

¹ Parking poles are metal poles at the edge of the sidewalk to prevent vehicles from driving up onto the sidewalk.

10. John Damiano, a PGW field service technician, visited the Service Address on September 14, 2018 for a relight order. Tr. 64; PGW Exh. 1.

11. Mr. Damiano found the gas off at the Service Address and turned it back on. Tr. 64; PGW Exh. 1.

12. Mr. Damiano checked the appliances and relit the pilot lights for a gas house heater and range. Tr. 65; PGW Exh. 1.

13. Mr. Damiano performed safety checks on the appliances and did not see any hazards at the premises. Tr. 66; PGW Exh. 1.

14. Flooding would have been considered a hazard at the Service Address and Mr. Damiano would have notified a supervisor if he found flooding. Tr. 68.

15. If there was flooding at the time that Mr. Damiano visited the Service Address, he would not have turned the gas back on or relit the pilot lights for the appliances. Tr. 68-69.

16. No other technicians from PGW visited the Service Address after Mr. Damiano went to the address on the relight order. Tr. 69; PGW Exh. 1.

17. PGW employees would not touch the water line at a premises and if there was a water issue at the Service Address, the technician would have contacted the water department. Tr. 71-72; PGW Exh. 1.

18. Mr. Damiano did not contact the water department after his September 2018 visit to the Service Address. Tr. 72; PGW Exh. 1.

19. Mr. Damiano did not touch the water line or turn it off at the Service Address on September 14, 2018. Tr. 72; PGW Exh. 1.

20. Serge Mois, a claims and litigation specialist with PGW, received a claim from the Complainant regarding her residence on or about October 1, 2018. Tr. 86-87; PGW Exh. 3.

21. On October 23, 2018, Mr. Mois requested a site visit be performed at the Service Address regarding the Complainant's claim. Tr. 87-88; PGW Exh. 4.

22. PGW made attempts to set up a site visit with the Complainant in October 2018, December 2018 and February 2019. Tr. 89-92; PGW Exh. 4.

23. On February 7, 2019, a PGW supervisor conducted a site visit to the Service Address to review the Complainant's claim and did not find evidence that PGW's work caused any flooding at the Service Address. Tr. 93; PGW Exh. 4.

24. Paving took place in front of the Complainant's premises on March 12, 2019. Tr. 93-94.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 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*, 578 A.2d 600, 602 (Pa.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 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). 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*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. 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. Pa. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Service Dispute

The Complainant asserts that PGW damaged her property on two occasions when it did line work on her street. She contends that in September 2018, the line work done by PGW caused flooding in her basement. The Complainant also alleges that a contractor for PGW caused damage to her parking poles in front of her premises when it did paving work in March 2019.

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 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S. § 1501, provides, in relevant part:

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 interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. . . .

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlt. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

Id. (footnote omitted).

The statutory definition of “service” is to be broadly construed.² *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlt. 1995). In applying the facts to the law, the issue becomes whether UGI's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

PGW presented the testimony of John Damiano, a PGW field service technician, who visited the Service Address on September 14, 2018 for a relight order. Tr. 64; PGW Exh. 1. Mr. Damiano found the gas off at the Service Address and turned it back on. Tr. 64; PGW

² “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them 66 Pa.C.S. § 102.

Exh. 1. Mr. Damiano checked the appliances and relit the pilot lights for a gas house heater and range. Tr. 65; PGW Exh. 1. Mr. Damiano stated that he performed safety checks on the appliances and did not see any hazards at the premises. Tr. 66; PGW Exh. 1. Mr. Damiano testified that flooding would have been considered a hazard at the Service Address and he would have notified a supervisor if he found flooding. Tr. 68. If there was flooding at the time that Mr. Damiano visited the Service Address, he indicated that he would not have turned the gas back on or relit the pilot lights for the appliances. Tr. 68-69. No other technicians from PGW visited the Service Address after Mr. Damiano went to the address on the relight order. Tr. 69; PGW Exh. 1. Mr. Damiano testified that PGW employees would not touch the water line at a premise and if there was a water issue at the Service Address, the technician would have contacted the water department. Tr. 71-72; PGW Exh. 1. Mr. Damiano stated that he did not contact the water department related to his September 2018 visit of the Service Address. Tr. 72; PGW Exh. 1. Mr. Damiano also stated that he did not touch the water line or turn it off at the Service Address on September 14, 2018. Tr. 72; PGW Exh. 1.

PGW also presented the testimony of Serge Mois, a claims and litigation specialist with PGW. Mr. Mois received a claim from the Complainant regarding her residence on or about October 1, 2018. Tr. 86-87; PGW Exh. 3. On October 23, 2018, Mr. Mois requested a site visit be performed at the Service Address in regard to the Complainant's claim. Tr. 87-88; PGW Exh. 4. Mr. Mois indicated that PGW made attempts to set up a site visit with the Complainant in October, December, and February. Tr. 89-92; PGW Exh. 4. On February 7, 2019, Mr. Mois testified that a PGW supervisor conducted a site visit to the Service Address to review the Complainant's claim and did not find evidence that PGW's work caused any flooding at the Service Address. Tr. 93; PGW Exh. 4. Mr. Mois noted that paving took place in front of the Complainant's premises on March 12, 2019. Tr. 93-94.

Based on the above, the Complainant has not met her burden of establishing that the Company violated the Code, Commission regulations or order in this matter. While I do not doubt the Complainant's allegations that there was flooding in her basement and damage to her parking poles, I am not persuaded that PGW was the cause of these issues. Mr. Damiano testified that he visited the Service Address on September 14, 2018 and did not see any flooding.

Further, Mr. Damiano testified that, if he had seen flooding at the Service Address, he would not have relit the pilot lights and would have contacted his supervisor which was not done in this case. There is no evidence that any other service technician from PGW visited the Service Address after Mr. Damiano and nothing to show that the flooding was caused by PGW's work on the Complainant's street. In regard to the parking poles, the Complainant acknowledged that she did not see the contractor for PGW damage her poles. In this matter, PGW complied with Commission regulations and there is no evidence of any violation. As such, the Complainant's formal Complaint must be denied and dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa.C.S. § 701.

5. Every public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. § 1501.

6. Service is defined as “any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, in the performance of their duties to their employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them” 66 Pa.C.S. § 102.

7. The Complainant has failed to meet her burden of establishing that the Company failed to provide adequate, safe and reasonable service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Debra Lindler against Philadelphia Gas Works, at Docket No. C-2019-3012938, is denied and dismissed.

2. That the docket at Docket No. C-2019-3012938 be closed.

Dated: May 4, 2020

/s/
Marta Guhl
Administrative Law Judge