

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carolyn Gumphar	:	
	:	
v.	:	C-2020-3018789
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

Complainant filed a Formal Complaint against Respondent alleging Respondent completed faulty repairs to a water line which subsequently damaged her property. This decision dismisses the Formal Complaint due to Complainant’s failure to meet her burden of proof.

HISTORY OF THE PROCEEDING

Carolyn Gumphar (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (Respondent, PAWC, or Company) on February 5, 2020, alleging that a plumber working on Respondent’s behalf damaged the water line to her property located at 902/904 7th Avenue, Elizabeth, PA (service location) resulting in a leak into her basement causing “mold growth, damage to walls, and other currently unrecognized potential damage.” As relief, Complainant requested that PAWC repair the leak and repair all the damage the leak has caused to her home.

On March 10, 2020, Respondent filed an Answer denying the material allegations in the Complaint.

On May 22, 2020, the Commission issued a Call-in Telephone Hearing Notice, scheduling an evidentiary hearing for July 29, 2020.

On May 26, 2020, a Prehearing Order was issued.

On July 29, 2020, an evidentiary hearing was held. Complainant appeared *pro se* and presented her case through her own testimony and the testimony of David Burke, her son-in-law. Respondent was represented by counsel, Timothy McHugh, Esq., and presented its case through the testimony of Company employee Mr. Todd Haslup and Exhibits 1 through 5, which were admitted into the record.

Although Complainant served her proposed exhibits upon the presiding officer prior to the hearing, she did not serve counsel for Respondent. The undersigned's office forwarded Complainant's proposed exhibits to Respondent's counsel after the hearing. Furthermore, during the course of the hearing, Respondent's counsel advised he would like an opportunity to submit some additional exhibits. At the hearing, the parties agreed that the record would be held open until August 31, 2020, to allow Respondent to submit any objections to Complainant's proposed exhibits and to allow Respondent to submit any additional proposed exhibits.

On July 30, 2020, an Interim Order was issued directing Respondent to file any objections to Complainant's proposed exhibits and serve any additional proposed exhibits by August 5, 2020. Complainant was directed to file any objections to Respondent's additional exhibits by August 12, 2020.

On August 5, 2020, Respondent served the undersigned with a cover letter and

two additional exhibits.¹ In its cover letter, Respondent advised it did not object to the admission of Complainant's exhibits.

Complainant did not submit any objection to Respondent's two additional exhibits.

On September 9, 2020, an Interim Order was issued closing the evidentiary hearing record.

On September 21, 2020, an Interim Order was entered, reopening the record and admitting Complainant's Exhibits 1-5 and Respondent's Exhibits 6-7 into the record.

On September 22, 2020, an Interim Order was entered closing the hearing record.

FINDINGS OF FACT

1. Complainant is Carolyn Gumpher, who owns a duplex located at 902/904 7th Avenue, Elizabeth, PA.
2. Complainant resides at 904 7th Avenue, and her tenant resides at 902 7th Avenue.²
3. Respondent is Pennsylvania-American Water Company, a jurisdictional public utility that provides residential water service to 902/904 7th Avenue.

¹ Respondent's additional exhibits were marked as Exhibit 1 and Exhibit 2 when originally served. At the hearing, however, other documents had been entered into the record as Exhibits 1 and 2. Therefore, by Interim Order entered September 21, 2020, the undersigned re-marked these additional exhibits as Exhibit 6 and Exhibit 7.

² Tr. 39:2-4.

4. Complainant offered her own testimony³, as well as the testimony of her son-in-law, David Burke⁴.

5. Respondent offered the testimony of Company employee, Todd Haslup.⁵

6. The water service lines for 902 7th Avenue and 904 7th Avenue are in a common trench.⁶

7. According to the Company's tariff, customers are responsible for the installation and maintenance of service lines.⁷

8. American Water Resources (AWR) is a separate subsidiary of American Water and is not part of PAWC.⁸

9. Customers of PAWC may choose to enroll in a waterline protection program offered by AWR to cover the customer-owned service lines.⁹

10. If a customer chooses to enroll in a waterline protection program through AWR, PAWC acts as AWR's billing agent so customers pay for the waterline protection program as part of their water bill and do not need to make a separate payment each month.¹⁰

³ Tr. 44:13-59:4

⁴ Tr. 63:3-61:6.

⁵ Tr. 16:19-42:13.

⁶ Tr. 60:20-22.

⁷ Tr. 19:2-6; Respondent Exhibit 5.

⁸ Tr. 19: 6-12.

⁹ Tr. 23:8-22.

¹⁰ Tr. 22:1-4, 23:1-7.

11. Complainant enrolled in AWR's waterline protection program on or about January 22, 2016.¹¹

12. Complainant called the Company on May 2, 2016, to report that she had lost water pressure.¹²

13. The Company generated an emergency service order to inspect for a leak¹³ and, on May 3, 2016, shut off Complainant's service to allow for repairs.¹⁴

14. There was a leak in Complainant's service line prior to her meter.¹⁵

15. Because the leak was prior to the meter, it was considered to be an "unmetered leak" and Complainant was never charged for any extra usage.¹⁶

16. PAWC was not involved in any repairs to Complainant's service line.¹⁷

17. On May 16, 2016, the Company verified that the leak had been repaired.¹⁸

18. After the leak to the service line was repaired in May 2016, water began leaking into the basement of 902 7th Avenue.¹⁹

¹¹ Tr. 21:20-24.

¹² Tr. 49:19-21.

¹³ Tr. 27:18-20.

¹⁴ Tr. 28:4-9.

¹⁵ Tr. 19:2-6; Respondent Exhibit 5.

¹⁶ Tr. 21:9-13.

¹⁷ Tr. 19:18-22.

¹⁸ Tr. 28:6-9.

¹⁹ Tr. 45:23-46:4.

19. Complainant did not have any leaks into the basement of 902 7th Avenue until after the repairs to her service line were made in May 2016.²⁰

20. After May 16, 2016, the next communication the Company had with Complainant was on July 29, 2019, when the Company sent a letter to Complainant requesting access to her meter for repairs unrelated to the 2016 leak.²¹

21. The final communication the Company had with Complainant was on June 29, 2020, when Complainant called regarding a high bill that is unrelated to the 2016 leak.²²

22. The Company was unaware that Complainant was experiencing any leaks after May 16, 2016, until she filed the instant Complaint.²³

DISCUSSION

Legal Standards

Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa.Cmwlth. 2008).

²⁰ Tr. 46:12-14, 21-23.

²¹ Tr. 28:17-21.

²² Tr. 29:10-15.

²³ Tr. 33:18-24.

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. See *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); see also *Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).²⁴

Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

Section 1501 of the Public Utility Code states, 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

²⁴ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa.Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa.Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa.Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa.Cmwlth. 2007) (citation omitted).

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....

66 Pa.C.S. § 1501.

Analysis

As discussed above, Complainant has the burden of proving that the Company has violated some regulation, statute, order, or tariff provision. At the hearing, Complainant testified she experienced a leak in her water line in 2016, had the leak fixed, and has had water leaking into the basement of 902 7th Avenue ever since.²⁵ She testified she never had this problem until after the plumber came out to fix the leak in 2016 and dug up the ground in front of her house.²⁶ She testified she filed her Complaint against the Company because she “just assumed that the water company was responsible.”²⁷ Complainant testified she has called PAWC repeatedly about the leak, but has been told that there is nothing they can do since it is not going through the meter.²⁸ She testified that she just wants somebody to come out and stop the water from coming into her basement.²⁹

²⁵ Tr. 45:23-46:4.

²⁶ Tr. 46:12-14, 21-23.

²⁷ Tr. 45:1-4.

²⁸ Tr. 54:2-10.

²⁹ Tr. 54:16-22.

Company employee Mr. Haslup testified to rebut Complainant's claims. Mr. Haslup testified that he reviewed the account records regarding 902/904 7th Avenue.³⁰ He testified that the 2016 leak was in her service line prior to her meter, and, according to the Company's tariff, customers are responsible for the installation and maintenance of the service line.³¹ He testified that because the leak was prior to her meter, it was considered an "unmetered leak" and she was never charged for extra usage.³²

Mr. Haslup explained that Complainant entered into a contractual agreement for a waterline protection program with AWR, which is a separate subsidiary of American Water and is not part of PAWC.³³ He testified that customers are not required to have the water protection program, and if they choose to have one, they are not required to sign up with AWR.³⁴ Mr. Haslup testified that for customer convenience, PAWC acts as a billing agent for AWR.³⁵ He testified that the Company's records show that Complainant's bill first reflected payment for the water line protection program on January 22, 2016.³⁶

Mr. Haslup testified that Complainant called the Company on May 2, 2016, to report a possible leak.³⁷ He testified that, as a result, the Company generated an emergency service order to inspect for leak.³⁸ The Company shut off Complainant's service on May 3, 2016, to allow for repairs³⁹, and on May 16, 2016, the Company verified that the leak had been

³⁰ Tr. 18:21-24.

³¹ Tr. 19:2-6; Respondent Exhibit 5.

³² Tr. 21:9-13.

³³ Tr. 19:6-12.

³⁴ Tr. 23:8-22.

³⁵ Tr. 22:1-4, 23:1-7.

³⁶ Tr. 21:20-24.

³⁷ Tr. 27:16-18.

³⁸ Tr. 27:18-20.

³⁹ Tr. 28:4-9.

repaired.⁴⁰ Mr. Haslup testified that the Company was never made aware that Complainant had ongoing leaks in her service pipe until she filed the instant Complaint.⁴¹

Mr. Haslup testified that PAWC was not involved in any repairs to Complainant's customer-owned service pipe and any repair or replacement of Complainant's service line in 2016 would have been performed by AWR or one of its contractors, not PAWC.⁴²

There is no doubt that water is leaking into Complainant's basement and that she is dealing with an unbelievably frustrating situation. What matters for the purposes of this proceeding, however, is whether she has proven that *the Company* has violated some statute, regulation, order, or tariff provision. She has not. Her Complaint alleges that the repairs completed to her service line in 2016 were faulty and that those faulty repairs are causing the leak into her basement. The record evidence shows PAWC did not complete any repairs to her service line. Accordingly, the Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 52 Pa.C.S. § 331; 66 Pa.C.S. §§ 102, 107, 1501, 701.

2. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

3. To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

⁴⁰ Tr. 28:6-9.

⁴¹ Tr. 33:18-24.

⁴² Tr. 19:18-22.

4. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa.Cmwlth. 2008) (citation omitted).

5. Complainant failed to carry her burden of proof establishing that Pennsylvania-American Water Company violated the Public Utility Code, its tariff, or a regulation or order of the Commission. 66 Pa.C.S. § 332.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Carolyn Gumpher filed against Pennsylvania-American Water Company at Docket No. C-2020-3018789 is dismissed.
2. That Docket No. C-2020-3018789 be marked as closed.

Date: October 20, 2020

/s/
Emily I. DeVoe
Administrative Law Judge