

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizabeth Goheen

v.

The York Water Company

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C-2021-3026068

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION:**

This initial decision sustains a formal complaint filed by a customer against her water company and imposes a civil penalty of \$1,000 because the company refused to reimburse her for a payment she made to a plumber to repair a water leak on facilities owned by the utility.

**HISTORY OF THE PROCEEDING**

On May 12, 2021, the Complainant, Elizabeth Goheen, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against The York Water Company (York Water). In her complaint, Ms. Goheen alleged that she reported a leak to York Water and was informed by the company that the leak was located on water facilities she owned and that it was her responsibility to repair the leak. She avers she hired a plumber to fix the leak but was informed by the plumber that the leak was actually located on facilities owned by York Water. York Water repaired its facilities. However, Ms. Goheen paid \$2,000 to the plumber for his services and seeks reimbursement of this amount from York Water.

On June 15, 2021, York Water filed an answer with new matter and preliminary objections (POs) to Ms. Goheen's complaint. In its answer, York Water acknowledged that the leak was on company-owned facilities but averred that the damage was caused by improper work performed by a worker on behalf of the Complainant to repair a prior leak. In its POs, York Water argued that Ms. Goheen's request to be reimbursed for money she paid to a private contractor should be stricken as impertinent matter because the Commission does not have the legal authority to order the payment of monetary damages by a public utility.

On August 2, 2021, I issued an order in which I granted York Water's POs on the issue of the Commission's inability to order the payment of monetary damages, but allowed the case to proceed on the issue of whether York Water rendered reasonable service to the Complainant. Rather than scheduling a hearing, however, I referred the proceeding to the Commission's mediation unit to give the parties an opportunity to resolve Ms. Goheen's complaint on an informal basis.

Settlement discussions were ultimately unsuccessful. Accordingly, by Telephonic Hearing Notice dated September 16, 2021, the Commission scheduled a hearing for October 27, 2021, and assigned me as the Presiding Officer. The October 27, 2021, hearing was held as scheduled. Ms. Goheen appeared and testified on behalf of herself. Ms. Goheen also presented the testimony of Keith Rinehart, a licensed Master Plumber. Ms. Goheen offered 12 exhibits, all of which were admitted into the record. Nicholas A. Stobbe, Esquire, and Devin T. Ryan, Esquire, appeared on behalf of York Water. Due to time constraints, however, the hearing was concluded after the testimony of Ms. Goheen and Mr. Rinehart and a further hearing was scheduled for November 19, 2021, at which York Water would present its witnesses. The November 19, 2021, hearing was held as scheduled. York Water presented the testimony of two witnesses who sponsored eight exhibits, all of which were admitted into the record.

The two hearings generated a 121-page transcript. The record closed on December 27, 2021, upon my receipt of the hearing transcript. This case is procedurally ready for ruling.

## FINDINGS OF FACT

1. Complainant, Elizabeth Goheen, is a customer of York Water for water service at 270 Charles Circle, York, PA, 17406. Tr. 8.

2. Respondent, York Water, is a jurisdictional public utility providing water service to Pennsylvania customers.

### March 2020 Leak

3. In March 2020, Ms. Goheen reported a leak on her property to York Water. Tr. 21, 68-69.

4. A York Water representative went to Ms. Goheen's property to investigate the leak report and concluded that the leak was on Ms. Goheen's facilities. Tr. 21, 68-71; York Water Ex. 5.

5. Ms. Goheen was informed by York Water that the leak was on facilities she owned, and she was instructed that repair of the leak was her responsibility. Tr. 70-74; York Water Exs. 3-4.

6. York Water provided to Ms. Goheen a leak letter and a leak brochure, both of which explained to her that, since the leak was on facilities she owned, it was her responsibility to repair the leak. Tr. 25, 71-73; York Water Exs. 3-4.

7. The leak letter and the leak brochure also provided guidance to Ms. Goheen about making repairs to the damaged facilities and informed her that, after repairs have been made, York Water must inspect the repair work. Tr. 71-73; York Water Exs. 3-4.

8. Ms. Goheen was informed that the excavation at the site of the leak should not be backfilled after the repair was made so that York Water could inspect the work. York Water Exs. 3-4.

9. Ms. Goheen had her nephew, Connor Goheen, repair the March 2020, leak. Tr. 23, 74.

10. Connor Goheen does general construction work, but Ms. Goheen does not know his actual occupation. Tr. 23.

11. Ms. Goheen informed York Water on March 9, 2022, that the leak had been repaired. Tr. 74.

12. Connor Goheen backfilled the excavation at the site of the leak before York Water came out to inspect the repair. Tr. 24, 75.

13. York Water personnel came to Ms. Goheen's house on March 9, 2020 but were unable to visually inspect the repair work because the excavation had already been backfilled. Tr. 24, 75.

14. York Water personnel used sonic equipment to listen to the leak site. Tr. 76.

15. York Water personnel did not hear any indication of a leak and, consequently, considered the leak repaired. Tr. 76.

#### January 2021 Leak

16. In January 2021, Ms. Goheen noticed evidence of a water leak on her property and contacted York Water. Tr. 9, 76.

17. On January 8, 2021, York Water personnel went to Ms. Goheen's house in response to her report of a leak. Tr. 9, 76; York Water Ex. 6.

18. The York Water technician used sonic equipment to listen at the site of the leak and determined that the leak was on facilities owned by Ms. Goheen. Tr. 9, 76.

19. Upon concluding that the leak was on facilities owned by Ms. Goheen, York Water provided to her a leak letter and a leak brochure which explained, *inter alia*, her responsibilities for repairing the leak and for allowing York Water to inspect the repair work. Tr. 76.

20. Ms. Goheen hired Keith Rinehart, a licensed Master Plumber, to repair the leak. Tr. 9, 29.

21. Mr. Rinehart went to Ms. Goheen's house on January 14, 2021, to investigate the leak report and make necessary repairs. Tr. 29-30, 78-79.

22. In addition to himself, Mr. Rinehart brought with him a traffic spotter and an excavator to assist him in investigating and repairing the leak. Tr. 34-35.

23. Mr. Rinehart excavated the area around the leak and exposed the plumbing at the leak site. Tr. 29-30.

24. The cause of the leak was a faulty curb stop. Tr. 9, 20, 30-31, 81; York Water Ex. 7.

25. The curb stop is part of the water facilities that are owned by York Water. Tr. 9, 20, 30-31, 81; York Water Ex. 7.

26. The damage to the curb stop consisted of a hole in a brass fitting. Tr. 32; Goheen Ex. 1.

27. Upon discovery of the damaged curb stop, Mr. Rinehart stopped work and contacted York Water. Tr. 30.

28. York Water personnel went to Ms. Goheen's house on January 14, 2021, and replaced its damaged curb stop. Tr. 30, 81; York Water Ex. 7.

29. Mr. Rinehart issued an invoice to Ms. Goheen for his services on January 14, 2021, in the amount of \$2,000. Tr. 13, 34-35.

30. Mr. Rinehart's invoice included fees for himself, the traffic spotter and the excavator. Tr. 34-35.

31. Ms. Goheen paid \$2,000 to Mr. Rinehart on January 14, 2021. Tr. 13; Goheen Ex. 1.

32. Use of an improper pipe wrench could put a strain on a brass fitting and cause it to split. Tr. 89.

33. York Water personnel are unable to say with certainty that the work performed by Connor Goheen in March 2020 resulted in the damaged curb stop discovered in January 2021. Tr. 99.

34. The hole in the curb stop could have occurred completely independent of the work performed by Connor Goheen in March 2020. Tr. 99, 108.

35. There was a substantial increase in Ms. Goheen's water usage from August 2020 to February 2021. Tr. 85; York Water Ex. 1.

36. The January 2021 leak at the curb stop did not cause the increased usage from August 2020 to February 2021, because the curb stop is located well before Ms. Goheen's water meter. Tr. 86, 92-93.

## DISCUSSION

The Complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof. 66 Pa.C.S. § 332(a). Ms. Goheen must establish that York Water has in some manner violated the provisions of the Public Utility Code (Code) or the regulations of the Commission in providing her water service. *Id.*

The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (October 6, 1976). The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether Complainant has satisfied her burden of proof. If the review indicates the burden has been satisfied, one must then determine whether Respondent has submitted evidence of co-equal value or weight to refute Complainant’s evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. *Morrissey v. Pa. Dep’t of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *affirmed*, 461 A.2d 1234 (Pa. 1983).

Furthermore, one must exercise care to ensure the decision of the Commission is supported by substantial evidence in the record. *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; *Yellow Cab Co. v. Pa. Pub. Util. Comm’n*, 524 A.2d 1069 (Pa. Cmwlth. 1987). The Pennsylvania appellate courts have defined the term “substantial evidence” to mean such relevant evidence that a reasonable mind may 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 & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep’t of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984). The Commission has held that a complainant, to establish a sufficient case

against a utility and satisfy the burden of proof, must show the utility is responsible or accountable for the problem described in the complaint. *Feinstein*.

Public utility companies are required to provide reasonable service to their customers. The reasonable service requirement is found in Section 1501 of the Code, 66 Pa.C.S. § 1501, and reads in pertinent 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. . . .

(Emphasis added).

Additionally, the Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980). The term "service" is "[u]sed in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under [the Public Utility Code]. . . ." 66 Pa.C.S. § 102.

The record evidence reveals that many of the material facts in this proceeding are not in dispute. In March 2020, Ms. Goheen reported a leak to York Water. Tr. 21, 68-69. A York Water representative went to her house and, upon investigating the leak, determined that the leak was on facilities owned by Ms. Goheen. Tr. 68-71. Ms. Goheen was informed by York Water that, because the leak was on a portion of the water facilities that she owned, she was responsible for the repair of the leak. Tr. 70-74. York Water provided to her a leak letter and a leak brochure. York Water Exs. 3-4. These materials informed her that she was responsible for the repair of the leak. They also provided instructions about making repairs to the damaged

facilities and informed her that, after the repair was made, York Water must inspect the work. Tr. 71-73; York Water Exs. 3-4. Ms. Goheen was informed by York Water that the excavation site should not be backfilled after the repair was made until after company personnel inspected the repair work. York Water Exs. 3-4.

Ms. Goheen had her nephew, Connor Goheen, repair the leak. Tr. 23, 74. Connor Goheen repaired the leak, but he backfilled the excavation site before York Water could inspect the repair work. Tr. 24, 75. This was acknowledged by Ms. Goheen during her testimony. Tr. 24. Ms. Goheen contacted York Water on March 9, 2020, to inform it that the leak had been repaired. Tr. 74. A York Water representative went to her house on March 9, 2020 but was not able to visually inspect the repair work, since the site had already been backfilled. Tr. 24, 75. The company representative used sonic equipment to listen to the leak site following the repair work by Mr. Goheen. He did not hear any indication of a leak and concluded that the leak had, in fact, been fixed. Tr. 76.

Many months later, in January 2021, Ms. Goheen again noticed evidence of a water leak on her property and contacted York Water. Tr. 9, 76. A York Water representative went to her property and used sonic equipment to try to determine the location of the leak. Tr. 9, 76. York Water again concluded that the leak was on facilities owned by Ms. Goheen and informed her that it was her responsibility to have the leak repaired. She was provided with a leak letter and a leak brochure, both of which explained her responsibilities and of the need to allow the company to inspect the repair work before backfilling the excavation site. Tr. 9, 76; York Water Exs. 3-4.

In reliance on York Water's determination that the leak was on Ms. Goheen's facilities, she hired Keith Rinehart to repair the leak. Mr. Rinehart is a licensed Master Plumber. Tr. 9, 29. Mr. Rinehart went to Ms. Goheen's house on January 14, 2021, to repair the leak. Tr. 29-30, 78-79. Mr. Rinehart took with him to her house a traffic spotter and an excavator to assist with the project. Tr. 34-35. Mr. Rinehart excavated the site of the leak and found that the cause of the leak was a damaged curb stop device. Tr. 29-30; Goheen Ex. 1. The damage to the curb stop was a hole in a brass fitting. Tr. 32; Goheen Ex. 1. Both parties agree that the curb stop is

part of the facilities owned by York Water and not Ms. Goheen. Tr. 9, 81. York Water acknowledged that utilities are responsible for maintaining and repairing company-owned facilities and customers are responsible for maintaining and repairing customer-owned facilities. Tr. 73-74.

Upon discovering the source of the leak, Mr. Rinehart stopped working and contacted York Water. Tr. 30. York Water personnel went to Ms. Goheen's property that same day and replaced the damaged curb stop. Tr. 30, 81, 84; York Water Ex. 7. There have been no leak issues since that time.

Although Mr. Rinehart did not repair the leak, he nonetheless submitted a bill for his services to Ms. Goheen on January 14, 2021, in the amount of \$2,000. Tr. 13, 34-35. Mr. Rinehart explained that the total amount includes charges for his time, the traffic spotter and the excavator, who did the initial excavation before the actual source of the leak was discovered. Tr. 34-35. Ms. Goheen paid the full amount of the invoice on January 14, 2021. Tr. 13. Ms. Goheen testified that she discussed with York Water personnel being reimbursed the \$2,000 she paid to Mr. Rinehart, since the cause of the leak was on facilities owned by the company, but the company ultimately refused reimbursement. Tr. 37, 105, 107-108.

As noted, the background facts described above are generally not in dispute. The parties disagree, however, on who was responsible for the January 2021 leak and, consequently, who should bear the cost of the repair. Ms. Goheen argues that, since the leak was on company-owned facilities, and the company ultimately made the necessary repair by replacing its curb stop, it should bear the cost.

In defending its refusal to reimburse Ms. Goheen the money she paid to Mr. Rinehart, York Water argued that the repair work performed by Connor Goheen in March of 2020 likely damaged the company's curb stop, which ultimately led to its failure and the leak that was discovered in January of 2021. Timothy Young testified on behalf of York Water. Mr. Young has served as a Distribution Superintendent for the company since 2008. Tr. 67. Mr. Young first emphasized, as noted above, that the excavation made in March 2020 was backfilled

by Connor Goheen before York Water could inspect the repair. Accordingly, York Water was unable to determine if the repair was done properly or if any other facilities were damaged. Tr. 75.

Mr. Young next suggested that Connor Goheen may have used an improper wrench when making his repairs in March 2020. He testified that the damaged curb stop that was replaced by York Water showed signs of having been sandblasted by aggregate, and also showed markings from a pipe wrench. Tr. 87. He stated the markings look like teeth from some type of pipe wrench. Tr. 88. He testified that, based on his experience, “when you put a pipe wrench on soft brass, it puts a lot of strain and could cause the brass to split.” Tr. 89. He further testified that the use of an improper wrench could have caused damage that did not manifest itself until several months down the road. Tr. 90. He opined that the failed curb stop that was discovered in January 2021 was damaged by the use of an improper tool by Connor Goheen in March 2020. Tr. 91, 101. Mr. Young stated that this damage was not discovered in March 2020 because the excavation site had already been backfilled by the time York Water personnel arrived at the site to inspect Connor Goheen’s work. Tr. 101.

York Water also presented evidence of Ms. Goheen’s monthly York Water bills from August 2020 through February 2021. York Water Ex. 1. Mr. Young testified that the consumption reflected on Ms. Goheen’s monthly bills from August 2020 through February 2021 increased significantly. Tr. 85. He testified that a leak on York Water’s facilities would not have caused the increase in consumption because the meter that serves her house is located well beyond where the company’s facilities end. Tr. 86. He testified that the increased consumption was likely caused by either a substantial increase in her actual consumption or a leak somewhere in the facilities that she owns. Tr. 86-87.

As noted, it is Ms. Goheen’s position that York Water should bear the responsibility for the costs associated with repair of the company’s damaged curb stop in January

2021.<sup>1</sup> She testified that she was originally told by York Water that the leak was on her facilities. Tr. 9. Accordingly, she hired a plumber to make necessary repairs and it was her plumber who discovered that the leak was on company-owned facilities. Tr. 9. She acknowledged that Connor Goheen filled in the repair site in March 2020 before York Water could inspect his repair work. Tr. 24. She questioned, however, how the company can say with certainty that Mr. Goheen damaged the curb stop if the company never inspected his work. Tr. 98.

I agree with Ms. Goheen and find that York Water rendered unreasonable service by refusing to reimburse her the money she paid to Mr. Rinehart relative to the January 2021 leak. The record evidence is clear and undisputed that York Water personnel investigated the leak report and initially concluded that the leak was on her facilities. Tr. 9, 20, 30-31, 81; York Water Ex. 7. York Water informed Ms. Goheen that she was responsible to repair the leak at her expense. Relying on this information, she hired Mr. Rinehart to repair the leak. Upon excavating the site, Mr. Rinehart found that the leak, in fact, was on the company's facilities. This was acknowledged by York Water. Tr. 9, 20, 30-31, 81; York Water Ex. 7. As noted above, York Water further acknowledged during the hearing that utilities are responsible for maintaining and repairing company-owned facilities and customers are responsible for maintaining and repairing customer-owned facilities. Tr. 73-74. Ms. Goheen paid \$2,000 to Mr. Rinehart for his services in investigating and discovering the source of the leak. Tr. 13.

York Water justifies its refusal to reimburse Ms. Goheen by arguing its belief, as described above, that its curb stop was damaged by Connor Goheen when he repaired an earlier leak in March 2020. York Water witness Mr. Young testified to his belief that Connor Goheen damaged the curb stop in March 2020 by using an improper pipe wrench. He testified, "when you put a pipe wrench on soft brass, it puts a lot of strain and could cause the brass to split." Tr. 89. He testified that this damage was not discovered in March 2020 because the excavation site

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<sup>1</sup> As noted, the Commission does not have the legal authority to order a public utility company to pay monetary damages. Ms. Goheen choose to pursue her complaint, nonetheless, on the issue of whether York Water rendered unreasonable service by refusing to reimburse her the money she paid to Mr. Rinehart, despite the fact that the damaged facilities were owned by York Water.

had already been backfilled by the time York Water personnel arrived at the site to inspect Connor Goheen's work. Tr. 101.

I am not persuaded by York Water's evidence that its curb stop was damaged by Connor Goheen. Mr. Young testified that he noticed what looked like teeth marks from a wrench on a brass fitting on the curb stop. Tr. 88. This led him to believe, "it looks like an improper tool was used to make repairs on the customer's side, which perhaps caused – well, looks like it caused – probably some type of fracture in the brass, which resulted in a leak on the company-owned curb stop." Tr. 91. Upon questioning from me, however, Mr. Young admitted that he was unable to say for certain that Mr. Goheen caused the damage to the curb stop.

The following exchange occurred during the hearing:

Judge: Mr. Young, you're saying that the curb stop was damaged – that it's a possibility the curb stop was damaged by Mr. Goheen in March of 2020 with the use of a wrench. That's a possibility but we – you do not know that for certain. Correct?

Witness: Correct.

Judge: Is it also possible that the – this damage we're seeing to the curb stop could have happened completely independent of anything that Connor Goheen did in March of 2020? I mean, are you able to say – it sounds to me like you're not about to say with a hundred percent certainty that Connor Goheen caused this damage. Is that correct?

The witness: That's correct.

Tr. 99, 108.

Accordingly, although the company argued that the damage to its facilities was caused by Connor Goheen, its own witness admitted that, in fact, it does not know this for certain.

In addition, Mr. Rinehart, a licensed Master Plumber, testified under cross-examination as follows:

Q: Mr. Rinehart, in your opinion, what can cause the damage that's shown in Ms. Goheen's photo of the curb stop?

A: Well, from what I'm looking at here, I see a number of things. That looks like it could be a bad casting from the casting manufacturer. It looks like the water actually bored a hole through it, to me.

Q: And Mr. Rinehart, could using the wrong equipment, like the wrong wrench, potentially cause damage similar to the photo?

A: No sir.

Tr. 33-34.

York Water's witness testified that he does not know for certain that Connor Goheen caused the damage to the curb stop. Ms. Goheen's witness testified that use of the wrong wrench could not have caused the damage that occurred to the curb stop. He also presented an alternative explanation as to the cause of the damage. Although the evidence presented by the parties in this case does not conclusively answer the question of what caused the damage to the curb stop, it certainly leads to a reasonable conclusion that York Water has not proven that the damage was caused by the work performed by Mr. Goheen in March 2020. Accordingly, I find it unreasonable for York Water to refuse to reimburse Ms. Goheen the money paid to Mr. Rinehart based on pure speculation as to the actual cause of the damage to its facilities. 66 Pa.C.S. § 1501.

As noted previously, the Commission lacks the legal authority to award Ms. Goheen monetary damages to reimburse her for the money she paid to a plumber to repair damage on York Water's facilities. However, based upon the decision entered in this proceeding, Ms. Goheen may file a complaint with the local district magistrate or the appropriate court of common pleas to recover monetary compensation for her damages if she so chooses. *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981).

## Civil Penalties

Ms. Goheen carried her burden of proof in establishing that York Water violated Section 1501 of the Public Utility Code in failing to provide her reasonable service related to the repair of the January 2021 leak. 66 Pa.C.S. § 1501. Therefore, the issue of penalties must be addressed.

Pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, the Commission may impose a maximum civil penalty of \$1,000 per day for each violation of the Code, its regulations or its orders. However, certain standards apply when imposing a civil penalty. *Rosi v. Bell Atl.-Pa., Inc.*, 94 Pa. PUC 103, Docket No. C-00992409 (Opinion and Order entered March 16, 2000) (*Rosi*).

The *Rosi* factors are generic in nature and apply to all violations of the Public Utility Code, as well as Commission regulations and orders, regardless of utility type. *Pa. Pub. Util. Comm'n v. NCIC Operator Servs.*, Docket No. M-00001440 (Order entered December 21, 2000). The factors and standards first articulated by the Commission in *Rosi* were published as Policy Statements and Guidelines. *See* 52 Pa. Code § 69.1201. Section 69.1201 applies to both litigated and settled cases involving the calculation of civil penalties. Section 69.201 in part, provides as follows:

- (a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.
- (b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. . . .

(c) The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201.

In the instant case, the evidence demonstrates that York Water failed to provide reasonable service to Ms. Goheen in its refusal to reimburse her the money paid to Mr. Rinehart based on pure speculation as to the actual cause of the damage to its facilities.

Considering the above evidence of York Water's violation, the following determinations are warranted under the *Rosi* factors and standards:

(1) I find York Water's conduct to be of a serious nature in that it based its decision to refuse reimbursement on pure speculation, where its own witness admitted that he was not certain as to the cause of the damage. As acknowledged by York Water, public utilities are responsible for maintaining and repairing company-owned facilities and customers are responsible for maintaining and repairing customer-owned facilities. Tr. 73-74. York Water failed to do so. Therefore, a higher penalty is warranted in the amount of \$1,000.00.<sup>2</sup>

(2) I find the consequences of York Water's conduct to be serious in that it has caused Ms. Goheen to have to expend a significant amount of time and energy in seeking redress where the company intentionally failed to meet its obligations to maintain and repair its own facilities at its own expense. Therefore, a higher penalty is warranted in the amount of \$1,000.00.

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<sup>2</sup> In *Rosi*, the Commission explained, "If the violation is intentional, the Commission should start with the presumption that the penalty will be in the range of \$500.00 to \$1,000.00 per day. If the violation is negligent, the Commission should start with the presumption that the penalty will be in the range of zero dollars to \$500.00 per day. . . the Commission retains broad discretion in determining a total civil penalty amount that is reasonable on an individual case basis." *Rosi* at 10.

(3) This was a litigated case. I find that York Water's conduct in refusing reimbursement based on pure speculation was intentional, rather than merely negligent. Therefore, a higher penalty is warranted in the amount of \$1,000.00.

(4) There is no evidence as to any efforts by York Water to modify internal practice and procedures to address the conduct at issue and prevent similar conduct in the future. Therefore, the civil penalties mentioned above are warranted.

(5) There is no evidence that other customers were affected by the conduct observed by York Water in this proceeding. This would result in a lower penalty.

(6) The evidence in this case is silent on York Water's compliance history. Therefore, an additional civil penalty based on this factor is not warranted.

(7) As there is no evidence of a Commission investigation into York Water's conduct, this factor will not be considered in determining an appropriate civil penalty.

(8) The civil penalty mentioned above is necessary to deter future violations by York Water.

(9) I am unaware of any past Commission decisions that address similar conduct in similar situations. Accordingly, this factor will not be considered in determining an appropriate civil penalty.

(10) There are no other relevant factors that would warrant a higher or lower penalty.

Considering the entire record, a civil penalty totaling \$1,000.00 is warranted.

## CONCLUSIONS OF LAW

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

2. The Complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof. 66 Pa.C.S. § 332(a).

3. The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (October 6, 1976).

4. Public utility companies are required to provide reasonable service to their customers. 66 Pa.C.S. § 1501.

5. Complainant carried her burden of proving Respondent violated the Code and Commission regulations and failed to provide Complainant with reasonable customer service. 66 Pa.C.S. §§ 332(a), 1501.

6. The Commission is authorized to consider and impose civil monetary penalties against a public utility company. 66 Pa.C.S. § 3301; 52 Pa. Code § 69.1201, *et seq.*

7. The Commission may impose a maximum civil penalty of \$1,000 per day for each violation of the Code, its regulations or its orders. 66 Pa.C.S. § 3301.

8. Civil penalties are to be assessed based upon an analysis of the factors set forth in *Rosi v. Bell Atl.-Pa., Inc.*, 94 Pa. PUC 103, Docket No. C-00992409 (Opinion and Order entered March 16, 2000).

9. Violations of the Public Utility Code and the Commission’s regulations that are of a serious nature warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1).

10. Respondent's conduct in this proceeding warrants the imposition of a civil penalty in the amount of \$1,000.00. 66 Pa.C.S. § 3301.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Elizabeth Goheen against the York Water Company at Docket No. C-2021-3026068 is hereby sustained.

2. That Respondent York Water company is hereby assessed a penalty of One Thousand Dollars (\$1,000.00) because Respondent failed to provide Complainant reasonable service in violation of Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501.

3. That Respondent York Water Company shall, within thirty (30) days of entry of the Commission's Final Order in this case, pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania addressed to:

Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

4. That York Water Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S.A. § 101, *et seq.*

