

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marilyn and Daniel B. Jones	:	
	:	
v.	:	C-2021-3029141
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Complainants, Marilyn and Daniel B. Jones, contend that UGI Utilities, Inc. moved their gas meter to a location that impedes the use of their walkway on the side of their house. They filed this Complaint seeking that the meter be moved by UGI to the front of the house. This decision finds that UGI has not acted unreasonably or in violation of the Public Code, Commission regulation, order, or its tariff in the placement of the meter.

HISTORY OF THE PROCEEDING

On October 4, 2021, Marilyn and Daniel B. Jones (“Complainants”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) against UGI Utilities, Inc. (“UGI” or “company”). In their Complaint, the Joneses stated that UGI moved their meter to a location that impedes the use of the walkway on the side of their home. The Complainants further stated that they have to lift items such as their lawn mower and garbage cans to pass the meter. They would like the meter moved to the front of the house.

On November 8, 2021, UGI timely filed an Answer to the Complaint. In the Answer, the company neither admitted nor denied the allegations regarding the lawn mower and garbage cans but did deny such averments to the extent that they are relevant and material. UGI admitted, however, that the company moved the meter from inside the residence to its present location. The company further asserted that the Complainants were advised that the proposed location of the meter was the side of the house, and the Complainants stated no objection.

Also in the Answer, UGI asserted that the company was required to move the meter from inside the residence to outside pursuant to UGI Tariff Rule 4.5, UGI Operations Manual Section 4.0, Commission regulations at 52 Pa. Code § 59.18 and the regulations of the Federal Energy Regulatory Commission at Title 49 C.F.R, Part 192 § 192.353. UGI also averred that the Complainants would be responsible for the cost of relocation of the meter and the cost to reconfigure any of their customer-owned inside piping to accommodate the new location.

On November 19, 2021, an Initial Call-In Telephone Hearing Notice was issued to all parties. The Notice advised the parties that the hearing would be held on January 12, 2022.

On November 22, 2021, a Prehearing Order was issued to the parties. The Prehearing Order advised the parties of the hearing procedures.

The hearing convened as scheduled on January 12, 2022. Mrs. Jones appeared *pro se*. Mr. Jones was not present. Larry Crayne, Esquire, appeared on behalf of UGI. Attorney Crayne presented witness Kevin Landmesser, UGI Senior Supervisor of Operations in Wilkes-Barre.

The following exhibits were admitted into the record during the course of the hearing:

- UGI Exhibit 1 - Photo
- UGI Exhibit 2 - Photo
- UGI Exhibit 3 - Meter Relocation Tariff
- UGI Exhibit 4 - Meter and Regulator Location and Installation Information
- UGI Exhibit 5 - Meter Location Requirements

The record closed on February 3, 2022 when the 48-page transcript was received.

FINDINGS OF FACT

1. The Complainants are Marilyn Jones and Daniel B. Jones.
2. The Joneses are gas service customers of UGI at their residence on South River Street in Wilkes-Barre, Pennsylvania (service address).
3. The Respondent is UGI Utilities, Inc.
4. The Complainants have a sidewalk in their yard on the right side of the service address (sidewalk). Tr. 10, UGI Exhibit 1.
5. Under what is called the SLIP program, UGI conducts frequent safety checks of the integrity of UGI inside piping. Tr. 37.
6. During a SLIP inspection at the service address, it was discovered that the UGI gas meter encasing pipe coming through the wall was severely corroded. Tr. 24, 37.
7. After the inspection, UGI determined that the encasing pipe had to be replaced and upgraded and that the meter needed to be placed outside. Tr. 24, 37.
8. On March 2, 2021, the Joneses were contacted and informed that the meter could be installed at the front of the house if there was access to the basement from the front of the house or attached to the side of the house. Tr. 24-25.

9. UGI moved the Complainants' gas meter from inside the service address to outside the service address on March 2, 2021. Tr. 25.

10. The meter was installed on the right side of the house rather than the front because there is no access to the basement from the front of the house. UGI Exhibit 2; Tr. 26-27.

11. Mrs. Jones was at home at the service address when UGI personnel moved the gas meter from the basement to outside on the right side of the house and voiced no objection at that time. Tr. 13.

12. UGI installed the meter on the side of the service address in a location that impedes use of the Complainants' private sidewalk. UGI Exhibit 1; Tr. 9-10.

13. The Complainants cannot take out their garbage or move their lawnmower to the front of the house without lifting it over the meter. Tr. 9-10.

14. Anyone using the sidewalk must walk around the meter. Tr. 10-11.

15. In July 2021, Mrs. Jones contacted UGI about relocating her meter. Tr. 26.

DISCUSSION

The Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

The Code defines “service” as:

[s]ervice, 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.

As the proponent of a rule or order, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainants must show that the respondent public utility violated either its duty under the Public Utility Code or the orders or regulations of the Commission, 66 Pa.C.S. § 701, or that the utility is responsible or accountable for the problem described in the Complaint. *Griggs v Phila. Gas Works*, Docket Number F-2020-3021754 (Opinion and Order entered July 15, 2021) (citing *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990)); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); 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 & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep’t of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants 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 Complainants 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).

A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

With respect to location of UGI facilities, the UGI Gas Tariff provides:

RULES AND REGULATIONS 4. SERVICE - SUPPLY FACILITIES

4.1 Facilities Ownership. Unless otherwise mutually agreed in writing that particular facilities are owned by the Customer, and except as provided in Sections 4.3 below, the Company will own and maintain any facilities required for the supply of Gas Service up to the outlet side of its metering equipment, including but not limited to, any mains, service lines, meters, regulators, connections or other equipment. All such equipment shall remain the exclusive property of the Company.

4.2 Facilities Location. The location of the Company's facilities shall in all cases be determined by the Company. The Customer shall provide, without charge, a suitable place for the meters, regulators or other equipment of the Company. The Customer is responsible to provide the connection point to the Customer's fuel line at a location adjacent to the terminus of Company facilities and where the connections are not concealed. Such

service line, meter and connection locations shall be accessible to the Company's employees for the safe installation, operation, inspection and maintenance of the facilities and shall be, at all times, readily accessible, and if inside, free of excessive temperature variations, with ample passageway, and whether inside or outside, free of obstacles, and unsafe and hazardous conditions and, if not accessible, the Company has ability to charge the Customer to move facilities to a location acceptable to the Company. The owner of a premises receiving or capable of receiving natural gas service from Company shall be deemed to consent to the location of Company facilities on the premises.

UGI Gas – Pa. P.U.C. No. 7, Original Page 33, Tariff Section 4.1, 4.2; UGI Exhibit 4.

Regarding relocation of UGI facilities, the UGI Gas Tariff states:

4.5 Facilities Relocation. (a) Changes in location of mains, service lines, meters, regulators, connections or other equipment for the accommodation of the Customer shall be done by the Company, unless otherwise mutually agreed, at the expense of the Customer. This provision includes the relocation of facilities by the Company where obstructions limit Company access to its facilities.

UGI Gas – Pa. P.U.C. No. 7, Original Page 33, Tariff Section 4.5; UGI Exhibit 5.

The Complainants are not contesting that UGI moved the meter outside, but to where outside it was moved. UGI moved the meter from inside the Complainants' basement to the right side of the house where their sidewalk is located. The Complainants would like UGI to move the meter out of the sidewalk way and to the front of the service address.

The record establishes a *prima facie* case for the Complainants. UGI moved the Complainant's meter from the service address basement to the right side of the service address. The meter now juts into the walkway, impeding its use. Tr. 9-10; UGI Exhibit 1. Mrs. Marilyn Jones credibly testified that the meter now incumbers the use of the sidewalk, and that she and her husband must raise heavy objects, such as the trash cans and lawnmower, over the meter to move them to the front of the house. Tr. 9-10, 16. A UGI photo shows that the meter is now partly blocking the sidewalk. UGI Exhibit 1.

In rebuttal, UGI presented witness Kevin Landmesser, UGI Senior Supervisor of Operations in Wilkes-Barre. Referencing the UGI Gas Tariff and the UGI General Operating Manual (GOM) Requirements for Meter Relocation – Meter and Regulator Relocation, he testified that all gas meters are relocated outside. UGI Exhibit 4; Tr. 23-24. He also stated that a safety check by the company of the inside piping at the service address revealed that the encasing pipe coming through the wall was severely corroded and therefore needed to be replaced and upgraded and the meter placed outside. Tr. 24, 37. He further testified that he spoke with Mrs. Jones about the meter relocation on March 2, 2021, including possible meter locations on the front of the house, if there was access underneath the front porch into the house, or the side of the house. Tr. 24-25, UGI Exhibit 2. As there was no access to the basement of the house underneath the front porch, the meter was relocated to the side of the house. Tr. 25, 26.

UGI moved the Complainants' meter to the side of the residence in March 2021. According to Mr. Landmesser, the Complainants did not contact the company about the location of the meter until she called the company on July 22, 2021. Tr. 26. He returned Mrs. Jones' call to discuss the Complainants' concerns, noting during the conversation that there was no objection to the location when the relocation work was being done and that if the Complainants wanted the meter moved, it would be done at the Complainants' expense. Tr. 16-27.

The language of the applicable tariff provisions and GOM support Mr. Landmesser's testimony. As previously noted, UGI Gas Tariff – Pa. P.U.C., No. 7, Original Page No. 33, Rules and Regulations, 4. Service-Supply Facilities, Section 41 states that UGI will determine the location of its facilities. GOM 35.1010, Section 1.0 Meter Placement requirements, Section 1.1, states, "Whenever practical, meters and regulators must be located outside and aboveground." UGI Exhibit 4. The Tariff also provides that a change in location of a meter will be at the expense of the customer. UGI Gas – Pa. P.U.C. No. 7, Original Page 33, Tariff Section 4.5; UGI Exhibit 5.

The UGI gas tariff also states that the location of the meter should be "free of obstacles, and unsafe and hazardous conditions." UGI Gas – Pa. P.U.C. No. 7, Original Page 33, Tariff Section 4.2. While the placement of the meter impedes the use of the sidewalk, the

evidence did not establish that the placement created an unsafe or hazardous condition. The Complainants also did not present evidence to overcome the rebuttal evidence of the company as to why the meter was placed at the side of the house or establish that the applicable tariff provisions are unreasonable or that the company otherwise acted unreasonably here.

On March 2, 2021, a company representative spoke to the Complainants about moving their meter and the options and limitations of where the meter could be moved. Mrs. Jones was present the day the company moved the meter from her basement to the side of her house in March 2021 and did not contact the company to question or object to where the meter was placed until July 2021. The reason that the company located the meter to the side rather than the front of the house – that there was not access into the basement from underneath the front porch - is reasonable.

Given that the meter juts into the sidewalk and impedes its use as well as may be subject to jostling or being hit by a lawnmower or trash can or someone walking on the sidewalk suggests that both parties have an interest in moving the meter. I find that UGI's attempts to work with the Complainants to move the meter at a reduced cost to be reasonable. While the tariff requires that the Complainants pay the costs of the meter relocation, UGI has offered to absorb the cost of moving and installing its facilities if the Complainants pay the costs of a plumber to do the piping work for the outlet needed to relocate the meter to the front of the house, a fourth of the total cost of the relocation. ¹ Tr. 28-29

The company has provided reasonable service as required under 66 Pa.C.S. § 1501. There is no violation by UGI here.

¹ Mr. Landmesser testified that the cost of relocating the meter to the front of the house would be \$4800, \$3600 for renewing the service line and \$1200 for the piping work tying the outlet side of the meter set into where it enters the house. Under the "middle ground" proposed by UGI, the company would cover \$3600 of the costs. Tr. 28-30.

CONCLUSIONS OF LAW

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

2. The Complainants failed to meet the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission.
66 Pa.C.S. § 332(a).

3. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997).

4. The location of UGI facilities shall in all cases be determined by the Company. UGI Gas – Pa. P.U.C. No. 7, Original Page 33, Tariff Section 4.2.

5. Changes in location of mains, service lines, meters, regulators, connections or other equipment for the accommodation of the Customer shall be done by the Company, unless otherwise mutually agreed, at the expense of the Customer. UGI Gas – Pa. P.U.C. No. 7, Original Page 33, Tariff Section 4.5.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint in the matter of Marilyn and Daniel B. Jones versus UGI Utilities, Inc. at Docket Number C-2021-3029141 is denied and dismissed.

2. That the Secretary shall mark this docket closed.

Date: May 9, 2022

/s/
Darlene Heep
Administrative Law Judge