

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dennis Heston	:	
	:	
v.	:	C-2019-3012999
	:	
Suez Water Pennsylvania, Inc.	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision sustains the formal Complaint of Dennis Heston (Complainant) against Suez Water of Pennsylvania, Inc. (Suez or Respondent) alleging that Suez failed to render reliable and adequate service as required by the Public Utility Code (Code) and the rules and regulations of the Pennsylvania Public Utility Commission (Commission) by failing to provide adequate water pressure. The Complaint is sustained because Complainant proved by a preponderance of the evidence that Suez violated a provision of the Code, specifically Section 1501, 66 Pa. C.S. § 1501, by failing to render adequate water service to Complainant’s residence.

**HISTORY OF THE PROCEEDING**

On September 10, 2019, Dennis Heston filed a formal Complaint with the Pennsylvania Public Utility Commission against Suez alleging that Suez had failed to provide adequate and reasonable service. Complainant alleged that Suez had replaced a water main in his area which led to a drop in water pressure in his residence such that two appliances that used water could not be operated at the same time. When this first occurred, there were six

individuals living in the residence though that later was reduced to four individuals. Complainant asked that the low water pressure situation be corrected.

On October 9, 2019, Suez filed an Answer to the Complaint denying any reliability problem and contending that there was no water pressure issue. Suez averred that subsequent to the main replacement referred to in the Complaint, Suez had conducted pressure tests on the system and found water pressure to be within the requirements of the Commission's regulation at 52 Pa. Code § 65.6. Suez asked that the Complaint be dismissed.

On October 23, 2019, Chief Administrative Law Judge Charles E. Rainey, Jr., referred the matter to the Commission's mediation unit. The case was not resolved in mediation.

On February 18, 2020, the case was scheduled for a telephonic evidentiary hearing on April 9, 2020. On March 17, 2020, that hearing was cancelled because of the uncertain status of Commission operations at the onset of the Covid-19 Pandemic.

On April 21, 2020, the case was rescheduled for a telephonic evidentiary hearing on May 26, 2020, and Notice of the same was sent to the parties.

On May 14, 2020, a standard form prehearing order was sent to the parties.

On May 26, 2020, the evidentiary hearing took place subject to Notice. Complainant appeared and presented testimony on his own behalf. Thomas T. Niesen, Esquire, appeared on behalf of Suez and offered the testimony of Arthur Saunders, the Engineering Manager for Suez. The following exhibits offered by Suez were admitted to the record: Suez Exhibit 1, a letter to customers with respect to the water main improvement project; Suez Exhibit 2, a service line pressure study; Suez Exhibit 3, a map of elevations in the Center Square pressure district; Suez Exhibit 4, a 14-day hydrograph of pressure readings; and Suez Exhibit 5, a 7-day hydrograph of pressure readings.

On May 28, 2020, a 31-page transcript was filed by the court reporter with the Secretary of the Commission. Also filed on that date were the exhibits received into evidence. The transcript and exhibits constitute the record in this case. After the hearing, the presiding officer recommended that the parties again try to settle this matter.

On January 10, 2022, an Order was issued posing the following questions to the parties: Have settlement discussions taken place, and what was the outcome; has there been any change in water pressure since the evidentiary hearing; and, if a device exists that can remedy the water pressure issue, I asked Suez to identify, with specificity, the name of the device.

On January 12, 2022, the parties provided an email response to the questions asked by the presiding officer on January 10, 2022. On the basis of those responses, an Order was issued closing the record in this matter on April 6, 2022.

This matter is now ready for disposition.

For the reasons explained below, Complainant has met his burden of proving, by a preponderance of the evidence, that Suez has violated the Public Utility Code at 66 Pa.C.S. § 1501 in that Suez has failed to provide adequate and reliable service. His Complaint is sustained, and Suez is to restore service at the same level of adequacy that Complainant had before the replacement of the water main serving Complainant before September, 2019, which according to Complainant was the last time that adequate service was provided.

#### FINDINGS OF FACT

1. Dennis Heston is the Complainant in this case.
2. Suez Water Pennsylvania, Inc., a Commission jurisdictional water company, is the Respondent in this case.

3. Complainant receives residential water service from Suez at 910 Thornton Drive, Mechanicsburg, Pennsylvania.

4. Water mains in the area of the service address are approximately 60 years old. Tr. at 21.

5. In 2019, Suez replaced the water main in Complainant's neighborhood. Tr. at 6.

6. Due to water quality issues and chronic water main breaks and leaks, the existing four-inch asbestos cement and two-inch galvanized water main in this area was replaced with an eight-inch ductile iron water main. Tr. at 9, 21-22.

7. By letter dated February 12, 2018, Suez advised customers in the area of the proposed main replacement. Tr. at 11-12; Suez Exhibit 1.

8. The net effect of the main replacement in the system was to reduce water pressure to 40 to 50 psi. Tr. at 10-11; 12.

9. Since the replacement, Complainant has experienced a reduction in water pressure in his residence such that he cannot flush the toilet while someone is taking a shower, cannot run the washing machine while someone is taking a shower, or wash dishes while someone is taking a shower. Tr. at 6.

10. There are four residents in Complainant's home affected by this drop in pressure. Tr. at 7.

11. Suez conducted a hydrographic pressure study on the service line to 910 Thornton Drive from October 11, 2019, through October 25, 2019. Tr. at 12; Suez Exhibit 2.

12. The hydrographic pressure logger recorded the pressure every two minutes during this two week period. Tr. at 12.

13. The hydrographic logger recorded pressure at the main, not inside Complainant's residence. Tr. at 14.

14. The residence at 910 Thornton Drive is at the high point of the street. Tr. at 14; Suez Exhibit 3.

15. Suez Exhibits 4 and 5 are pressure hydrographs of fourteen and seven days respectively that show pressures from data points on the system. Tr. at 16.

16. The option exists to place a pump in the Complainant's residence to increase water pressure. Tr. at 25.

### DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in his Complaint through a violation of the Public Utility Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa.C.S. §701; *Patterson v. Bell Tel. Co. of Pa.*, 72 PA P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *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). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *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. 1961).

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 now has to provide some 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 quality of service issue is within the Commission's jurisdiction under Section 1501 of the Public Utility Code, which states in pertinent part:

§ 1501. Character of service and facilities

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.

66 Pa.C.S. § 1501.

Thus, the statute at 66 Pa.C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd*, 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Tel. Co. of Pa.*, 243 A.2d 346 (Pa. 1968). 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 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa. PUC 662 (1993).

Further, the term “service” is defined broadly under Section 102 of the Code to include 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. See 66 Pa.C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). “Inappropriate and unreasonable treatment to customers can be interpreted as inadequate service[.]” *Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Opinion and Order entered May 9, 2011) (citing *O’Toole v. Metro. Edison Co.*, Docket No. C-20030854 (Opinion and Order entered May 9, 2005)).

As was established by the evidence presented by both parties, the present controversy began in 2018 when Suez embarked on the Center Square main replacement project to address the deterioration of that water main.<sup>1</sup> When the project was completed, the water pressure along parts of Thornton Drive where Complainant’s residence is located was less than what had been available when Complainant’s residence was served as part of the Grantham pressure district. Easement procurement issues had compelled Suez to site the main replacement in such a way that Complainant’s residence received service from that different pressure district. Tr. at 10.

Complainant testified that after the replacement of the water main in his area the water pressure in his home dropped substantially. Complainant testified that the water pressure

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<sup>1</sup> This Complaint concerns the same issue as that considered in *Grell v. Suez Water Pa., Inc.*, Docket No. C-2019-3012992. Suez objected to the consolidation of these Complaints, so that case is the subject of a separate Initial Decision.

dropped so substantially that it is not possible to operate two water-using appliances in the residence at the same time. Tr. at 5-6.

[P]rior to the update, everything was okay. I mean, I had, you know, 55, 60 pounds of pressure coming into the house. And then post this upgrade, you know, my static pressure on my line is at 35 pounds, you know. It's tough with a family of four, pressure issues that -- it's a real hassle. I mean, we have to time our showers with our washing. It's just a hassle.

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I can't flush the commode while someone's taking a shower. I can't run the washing machine while someone's taking a shower, or wash dishes while someone's taking a shower, or flush the commode. Washing dishes and shower, it's just impossible because of the water pressure just, it's too low.

Tr. at 5-6

No evidence was offered to rebut these contentions, and I find Complainant's testimony credible. Suez is not rendering adequate service to Complainant.

Through the testimony of its witness, Mr. Saunders, Suez conceded that when the Center Square main replacement project was completed, the water pressure along parts of Thornton Drive was less than what had been available when the area was part of the Grantham pressure district. The testimony offered by Mr. Saunders and the exhibits received into evidence are based on pressure measurements taken by Suez. Suez offered no evidence with respect to the water pressure inside the Complainant's residence. The hydrograph pressure study in October, 2019, recorded pressure at the main where it connected to the service line.

Suez seeks to justify this drop in pressure by reference to the Commission's requirement at 52 Pa. Code § 65.6. which states in pertinent part:

(a) *Variations in pressure.* The utility shall maintain normal operating pressures of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. at the main, except that during periods of peak seasonal

loads the pressures at the time of hourly maximum demand may be not less than 20 p.s.i.g. nor more than 150 p.s.i.g. and that during periods of hourly minimum demand the pressure may be not more than 150 p.s.i.g. A utility may undertake to furnish a service which does not comply with the foregoing specifications where compliance with such specifications would prevent it from furnishing adequate service to any customer or where called for by good engineering practices. The authority of the Commission to require service improvements incorporating standards other than those set forth in this subsection when, after investigation, it determines that such improvements are necessary is not hereby restricted.

52 Pa. Code § 65.6(a).

That the new water pressure at Complainant's residence is within the required range of not less than 25 psi nor more than 125 psi at the main does not refute Complainant's claim that Suez has not provided reliable and adequate service. Compliance with the requirements of the Commission's regulation at 52 Pa. Code § 65.6 does not in itself prove that Complainant is being provided with adequate service within the meaning of 66 Pa.C.S. § 1501. When there has been such a pronounced deterioration in the quality of service as has been established by Complainant's uncontradicted testimony and which has been caused by the utility, then the utility has violated the requirements of Section 1501. This includes rendering inadequate water pressure. See *Honey Brook Water Co. v. Pa. Pub. Util. Comm'n*, 647 A.2d 653 (Pa. Cmwlth. 1994);<sup>2</sup> See also *Fox Ridge Vill., LP v. Pa. Pub. Util. Comm'n*, 258 A.3d 1161, (Pa. Cmwlth. 2021 Unpublished) (Utility acted reasonably when it refused to provide water service to homes located above 1,220 feet in a development until after the developer installed a booster pump station and a diesel generator to increase water pressure.)

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<sup>2</sup> Complainants, customers of a utility company, filed a complaint with the Commission alleging that the company violated 66 Pa.C.S. § 1501 by not providing sufficient water pressure. The ALJ sustained the complaint, ordered the utility to have a well required by a prior order of the Commission in operation within 45 days or pay a fine, and directed the issuance of an order to show cause requiring the utility to show cause why it should not be fined for disobeying the prior order. The utility filed exceptions, which the Commission denied. The Commonwealth Court upheld the Commission on appeal. The court also held that there was sufficient evidence to find that the utility did not provide service as required by Section 1501, and that the Commission's orders were proper under 66 Pa.C.S. § 501.

Reasonable and adequate utility service is not provided when the actions of a utility, no matter how well intended, substantially degrade the quality of service previously enjoyed by a customer. As stated, above, technical compliance with the Commission's regulation at 52 Pa. Code § 65.6 is not dispositive of the issue in this case. Having caused the decline in quality of service, Suez must take the necessary steps to restore the same quality of service that Complainant enjoyed before Suez replaced the water main that led to the drop in water pressure at the service address.

For the reasons explained, above, Complainant has met his burden of proving, by a preponderance of the evidence, that Suez has violated the Public Utility Code at 66 Pa.C.S. § 1501 in that Suez has failed to provide adequate and reliable service. Mr. Heston's Complaint is sustained, and Suez is to restore service to the same level of adequacy that Complainant enjoyed before September, 2019, the last time that adequate water pressure was available at Complainant's residence. Tr. at 6.

#### CONCLUSIONS OF LAW

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

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

3. To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in his Complaint through a violation of the Public Utility Code or a regulation or order of the Commission; this must be shown by a preponderance of the evidence. 66 Pa.C.S. § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 PA P.U.C. 196 (1990).

4. 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

