

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melvin D. Williams	:	
	:	
v.	:	C-2022-3030717
	:	C-2022-3030719
The Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses a Complaint alleging that Respondent's installation of a lead water line replacement caused water to infiltrate the basement of the service address. Complainant failed to present evidence to establish that the installation was the source of the water infiltration so as to warrant a finding of unreasonable service.

HISTORY OF THE PROCEEDING

On December 31, 2021, Complainant Melvin D. Williams (Mr. Williams) filed Formal Complaints with the Pennsylvania Public Utility Commission (Commission) against Respondent, The Pittsburgh Water and Sewer Authority (PWSA, Authority or Respondent), at Dockets Nos. C-2022-3030717 and C-2022-3030719, concerning his water and stormwater service.¹ The Complaints at the two dockets are identical (collectively referred to in the singular as the Complaint). In his Complaint, Mr. William alleged as follows:

¹ Previously on October 27, 2021, Mr. Williams filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3810380, claiming PWSA's newly installed service line was leaking and causing damage to his basement. However, BCS denied Mr. Williams claims and dismissed the informal complaint on December 7, 2021.

Water is flooding through my basement wall at a newly installed lead line replacement line by PWSA contractors. They refused to correct the flow. It is destroying my basement.

Complaint ¶ 4. For relief, Mr. Williams requested the following: “The PWSA should dig up its new lines and determine the source of the flooding water and halt it.” *Id.* ¶ 5.

PWSA filed an Answer and New Matter and Motion to Consolidate (Motion) on February 23, 2022. PWSA admitted in part and denied in part the material allegations of the Complaint. PWSA admitted that it provides water and stormwater service to Mr. Williams’ residential property at 1032 North Lang Avenue in Pittsburgh (the Property or service address). Answer ¶¶ 1, 3. PWSA admitted, “On July 2, 2019, PWSA completed a lead line replacement at the Property.” *Id.* ¶ 4(a). PWSA alleged in part that Mr. Williams contacted the Authority’s Lead Help Department on September 1, 2021, complaining about water coming into his basement where the lead line replacement enters the Property. *Id.* ¶ 4(b). PWSA claims that on September 3, 2021, its contractor, Independent Enterprise, Inc. (IEI), investigated Mr. Williams’ complaint and “resealed the wall as a precaution but discovered that the water was coming into the basement from multiple locations.” *Id.* ¶ 4(c).

PWSA denied that Mr. Williams was entitled to the requested relief and averred that the Complainant failed to allege that the Authority had violated Pennsylvania law, Commission regulations, or the Authority’s tariffs. *Id.* ¶ 5. For relief, PWSA requested that the Complaint be dismissed.

In New Matter, PWSA averred in part as follows:

12. Claims for property damage and/or diminution of property values are not determined by the Commission. The Commission’s jurisdiction does not include actions that sound in either contract or tort. The authority of the Commission does not include the power to award monetary damages, such as damages to property. It is well settled that the courts of common pleas have jurisdiction over suits for damages, including claims against public utilities.

13. To the extent that Mr. Williams is seeking a Commission directive for an award of damages or for PWSA to conduct repairs unrelated to its facilities, these matters are beyond the jurisdiction of the Commission.

New Matter ¶¶ 12-13 (footnotes omitted).

As relief, the Authority requested dismissal of the Complaint or in the alternative, entry of an interim order directing the parties to hold a conference about resolving the case, that is, referral of the matter to the Office of Administrative Law Judge's Mediation Unit.

In its Motion, the Authority averred in relevant part that the Complaints at Dockets Nos. C-2022-3030717 and C-2022-3030719 were identical with respect to water service and stormwater service, and both services involved the same issues of facts and law. Motion ¶ 5.

The Authority further averred as follows:

6. Section 5.81(a) of the Commission's regulations states that "[t]he Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer [also] may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay." 52 Pa. Code § 5.81(a).

Motion ¶ 6.

PWSA served its New Matter and Motion upon Mr. Williams on February 23, 2022, together with a Notice to Plead to the New Matter and Motion within twenty days of service. Mr. Williams did not file a response to the New Matter nor Motion, as provided for under the Commission's regulations.²

² "Unless otherwise ordered by the Commission, replies to answer seeking affirmative relief or to new matter shall be filed with the Commission and served within 20 days after date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing." 52 Pa. Code § 5.163(a).

"*Response to motions*. A party has 20 days from the date of service within which to answer or object to a motion unless the period of time is otherwise fixed by the Commission or the presiding officer." 52 Pa. Code § 5.103(c).

By an interim order issued on April 6, 2022, the two Complaints were consolidated and referred to the Commission's Mediation Unit for mediation review. However, mediation did not achieve resolution of the Complaints. Consequently, on June 7, 2022, the Commission notified the Parties that a telephonic hearing would be held for this case by me on July 7, 2022, at 10:00 a.m. A Prehearing Order outlining the applicable procedural rules for the hearing was issued to the Parties on June 9, 2022.

The hearing convened as scheduled on July 7, 2022. Complainant appeared self-represented. Complainant testified on his own behalf. He offered one exhibit, which was not admitted into the record.³ Respondent was represented by Lauren Burge, Esquire, who called three witnesses. Respondent's witnesses sponsored Exhibits 1 through 7, which were admitted into the record.

The hearing generated a 113-page transcript, which was filed on August 11, 2022. The record was closed by an interim order dated August 16, 2022. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Melvin Williams receives water and stormwater service from Respondent at 1032 N. Lang Avenue, Pittsburgh, PA 15208, which he purchased in 1960. Tr. 21-22.

2. Respondent, The Pittsburgh Water and Sewer Authority, is a jurisdictional public utility providing water and stormwater service to Pennsylvania customers including Complainant at the service address.

³ On July 5, 2022, Mr. Williams emailed to PWSA's counsel and me a statement captioned as follows: Response of Melvin Williams to answer and exhibits of PWSA, C-2022-3030717. The statement in part reiterated allegations of his Complaint and contained new allegations. PWSA objected to the admission of the statement as untimely and raising new allegations. Mr. Williams responded that the new allegations arose after he filed his Complaint. In sustaining the objection, I informed Mr. Williams he could give testimony on his written statement, but not to read from his written statement. As testimony developed, I would rule on any new allegations. Tr. 13-17.

3. On July 2, 2019, PWSA's contractor replaced the lead water line at the front wall of the basement of the service address with a new water line (line replacement). Tr. 18, 41-42, 68.

4. The line replacement is installed approximately five feet underground at the service address and enters the front of the basement wall approximately five feet above the basement floor. Tr. 27.

5. On September 1, 2021, Mr. Williams contacted PWSA, and he claimed water at the site of the newly installed line replacement was leaking into his basement, which is poured concrete. Tr. 22, 42.

6. On September 2, 2021, PWSA's contractor resealed the basement wall of the service addresses at the site of the line replacement as a precautionary measure. Tr. 42-43.

7. In conducting a leak detection in a water line, a PWSA crew uses technology that sounds, that is, listens for a leak in the water line. If no sound is heard that indicates to a PWSA crew that there is no leak in the infrastructure. Tr. 43-45, 55.

8. On September 17, 2021, PWSA's Manager of Field Operations, Lucas Erny (Witness Erny), conducted a leak detection of the service address, and he did not detect any leaks in PWSA's infrastructure, that is, in the line replacement. Tr. 33, 43-44, 59-60.

9. During his leak detection, Witness Erny field tested the water condensation around the line replacement for chlorine because PWSA treats drinking water with chlorine. Tr. 61-63, 97-99.

10. Witness Erny's field test of the water infiltration around the line replacement proved negative for chlorine. Tr. 61-63, 97-98.

11. During his leak detection, Witness Erny observed downspouts from an adjacent building draining into the foundation of the service address. Tr. 45-46, 53-54; Exhibit 5.

12. During the leak detection, Mr. Williams mentioned to Witness Erny that water enters the basement of the service address after a heavy rain fall. Tr. 45.

13. The service address is a corner structure that shares a party wall with the structure on the right at 1030 N. Lang Avenue, Pittsburgh, PA 15208. Tr. 24-26.

14. At least six years prior to 2022, water was leaking into the basement of the service address along the side of the party wall. Tr. 26.

15. There are two sump pumps in the basement of the service address one, to drain the water “coming in on the wall of a neighboring building at 1030” N. Lang Avenue and another to drain groundwater in the rear of the basement. Tr. 25-27, 31-32.

16. On January 20, 2022, PWSA’s Water Distribution Program Coordinator, Darby Neidig (Witness Neidig), conducted a site visit of the service address, and he took photographs of Mr. Williams’s basement. Tr. 65-66; Exhibit 6.

17. On January 20, 2022, Witness Neidig did not observe any water actively infiltrating the area where PWSA’s water line replacement penetrated the basement wall of the service address; however, he observed condensation around the line replacement. Tr. 65-66, 70-71.

18. On January 20, 2022, PWSA’s Witness Neidig observed water was infiltrating the front basement wall of the service address at multiple locations beyond the area of the line replacement. Tr. 69-70; Exhibit 6.

19. As of January 20, 2022, the area immediately around the water line replacement in the basement of the service address remained sealed with hydraulic cement. Tr. 70; Exhibit 6.

20. As of January 20, 2022, the walls of the basement were not adequately waterproofed, waterproofing in place had eroded, and there was indication of prior water saturation in several areas of the basement beyond the area of the lead water line replacement. Tr. 69; Exhibit 6.

21. On January 28, 2022, a PWSA service person collected, for laboratory testing, a sample of water from the sump pump near the party wall of Mr. Williams' basement. Tr. 90.

22. The laboratory test of the sample of water from Mr. Williams' sump pump showed low levels of fluoride and orthophosphates; "treated water from PWSA's system would have shown significantly high level of fluoride and orthophosphate." Tr. 91; Exhibit 7.

23. The laboratory test of the sample of water from Mr. Williams' sump pump showed a high chloride level consistent with natural groundwater due to ice melt used in the winter months. Tr. 91.

DISCUSSION

Burden of Proof

A complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof. 66 Pa.C.S. § 332(a). Thus, a complainant must establish that the utility has in some manner violated the provisions of the Public Utility Code (Code) or the regulations of the Commission or a Commission order in providing 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). 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 his 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), *aff’d*, 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 Comp. 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. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990).

Reasonable Service Requirement

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, 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. Thus, a utility's actions in removing an old lead water line and installing a new replacement line in a customer's property must be reasonable, adequate, and sufficient.

Positions of the Parties

Mr. Williams contends that the front wall of his basement was not leaking before PWSA's contractors removed his old lead line. Tr. 18, 23, 27. According to Mr. Williams, after the contractors installed the line replacement, water began pouring into the basement's front wall. *Id.* Mr. Williams maintains that when the contractors came out to remediate the situation "water was pouring out of the wall that they had just worked upon." *Id.* Mr. Williams agrees with PWSA's witnesses that after he complained about the water leaking into his basement, contractors came out and repatched the area around the installation site. Tr. 19. However, the repatching did not stop the water from leaking into the basement, Mr. Williams asserts. *Id.* Mr. Williams also agrees with PWSA's witnesses that they did sound testing on the line replacement to determine the source of the leaking water and performed chemical tests of the water in his

basement to determine if the leaking water was from PWSA's service. *Id.* Mr. Williams submits the following:

Mr. Erny and his crew was out investigating that, but that would not tell us whether the lead lines were leaking or not, or the newly installed replacement of the lead line were leaking or not. They [PWSA] did everything but look at the new lines, and that's yet what we need, them to examine those lines and see where that water's coming from that seem to be coming from their new lines.

And so, we've had many attempts to resolve this, but I believe that's the only way you're going to resolve it. But for some reason they refuse to look at those lines with all the equipment and all the resources they have to do that, and that's what this case is about, Your Honor.

Tr.19-20. To resolve his Complaint, Mr. Williams wants PWSA to excavate the line replacement to determine whether the source of the water leaking into his basement is the newly installed water line replacement. Tr. 20-21.

PWSA agrees that water is leaking into Mr. Williams' basement but contends the line replacement is not the source of the infiltration. Instead, PWSA submits, based upon its testing of the water in Mr. Williams' basement and the observations of its witnesses, the water infiltrating into the basement is groundwater. Tr. 75, 91, 98, 102.

Analysis

Mr. Williams claims there is a leak in PWSA's line replacement causing water to come into the front wall of his basement. Tr. 107. The evidence establishes that PWSA installed a line replacement in Mr. Williams basement on July 2, 2019. More than two years later, on September 1, 2021, Mr. Williams contacted PWSA and complained that the line replacement was leaking. On September 17, 2021, PWSA's Witness Erny conducted a leak detection of the service address, and he did not detect any leaks in PWSA's infrastructure, that is, in the lead water line replacement. Tr. 33, 43-44, 59-60. Witness Erny also field tested the condensation

around the line replacement for chlorine. A positive test for chlorine would indicate that there was a leak in the line replacement because PWSA treats its water with chlorine. However, the field test was negative for chlorine. Thus, Witness Erny suggested the tested water was groundwater. Tr. 98.

PWSA took a sample of water from Mr. Williams' sump pump to do more extensive laboratory testing because treated water from PWSA's system would show significantly high level of fluoride and orthophosphate. However, the laboratory test showed low levels of the chemicals. Tr. 91; Exhibit 7. Additionally, the laboratory test of the sample of water from Mr. Williams' sump pump showed a high chloride level consistent with groundwater due to ice melt used in January. Tr. 91.

PWSA's photographic evidence also reveals that there is water infiltrating Mr. Williams basement beyond the area of the line replacement, and the waterproofing in the basement is eroding beyond the line replacement. Tr. 69; Exhibit 6. Witness Erny suggested a source of the water infiltration into Mr. Williams' basement is the adjacent building's downspout, which is draining into the foundation of the service address. Tr. 45-46, 53-54; Exhibit 5.

Mr. Williams did not present any evidence to overcome or refute PWSA's field and laboratory tests or onsite observations of multiple leaks in his basement. Mr. Williams argued, "I have heard no reliable evidence that PWSA knows where this water is coming from." Tr. 103. According to Mr. Williams a simple excavation of the line replacement would put the matter to rest. Tr. 104. However, the burden of proof was not upon PWSA to establish the source of water infiltration into Mr. William's basement. Under the Commission's statute, the burden of proof was upon Mr. William's to establish that the line replacement installed by PWSA was leaking. *See* 66 Pa.C.S. § 332(a).

Ruling

Mr. Williams' evidence that PWSA's line replacement is leaking is conclusory and speculative at best. Essentially, Mr. Williams contends his front basement wall was not leaking before PWSA's installation of the line replacement and now more than two years later the basement wall is leaking. Therefore, in Mr. Williams' opinion, the line replacement must be leaking. Tr. 107.

Unfortunately for Mr. Williams, speculation or a mere suspicion is not evidence. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). Mr. Williams did not establish that PWSA violated any provision of the Code or Commission regulation or that PWSA is responsible for his water infiltration problem. Accordingly, a ruling is required that Mr. Williams failed to carry his burden of proof. Thus, the Complaint must be dismissed.

CONCLUSIONS OF LAW

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

2. A complainant, as the proponent of a rule, bears the burden of proving that respondent has in some matter violated the provisions of the Public Utility Code or the regulations of the Commission in the course of providing services. 66 Pa.C.S. § 332(a).

3. Complainant must show that the respondent/utility company is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). 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).

4. Speculation or a suspicion of the existence of fact is not evidence. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

5. Complainant has not met his burden of proving by a preponderance of the evidence that the named public utility is responsible or accountable for the problem described in his complaint. 66 Pa.C.S. §332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaints filed by Complainant Melvin Williams against Respondent The Pittsburgh Water and Sewer Authority at Docket Nos. C-2022-3030717 and C-2022-3030719 are hereby dismissed for Complainant's failure to carry his burden of proof.

2. That the Commission's Secretary's Bureau shall mark Docket Nos. C-2022-3030717 and C-2022-3030719 closed.

Date: October 18, 2022

_____/s/
Conrad A. Johnson
Administrative Law Judge