

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen Kacer	:	
	:	
v.	:	C-2022-3032350
	:	
UGI Utilities, Inc.	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This decision denies a formal complaint in which Complainant alleged Respondent incorrectly installed a natural gas pipeline on Complainant’s property resulting in a broken gas pipeline when Complainant performed excavation work on his property on May 14, 2021.

**HISTORY OF THE PROCEEDING**

On May 3, 2022, Stephen Kacer (Complainant or Mr. Kacer) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (Respondent or UGI) alleging UGI installed its natural gas pipeline incorrectly and specifically did not install it according to code. Mr. Kacer contends UGI failed to install the pipeline at the appropriate depth and did not use caution tape. Complainant asks the Commission to order UGI to be responsible for the cost of repairing the pipeline after Mr. Kacer hit the pipeline while excavating in his front yard.

On May 25, 2022, Respondent filed an Answer, in which UGI denied the service line was installed incorrectly. UGI contends the service line was installed in accordance with all applicable requirements, but Complainant damaged the service line on May 14, 2021, when excavating with mechanized equipment without a valid PA One-Call<sup>1</sup> permit. UGI further contends the damage to the service line cost \$1,614.15 to fix and the costs to repair the broken service line is Complainant's responsibility because Complainant caused the damage. UGI argues it properly billed Complainant for the cost to repair the service line (\$1,614.15) minus a goodwill reduction of \$464.15, for a total of \$1,150.00.

On May 23, 2022, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice, which scheduled an initial telephonic hearing to be conducted on July 14, 2022, before Administrative Law Judge (ALJ) Katrina L. Dunderdale. On June 2, 2022, the ALJ issued a Prehearing Order, reminding the parties as to the date, time and manner of hearing, and advising the parties about various procedural rules including the rules concerning discovery, subpoena requests and presentment of documents to opposing parties.

On July 14, 2022, the presiding officer convened the initial hearing as scheduled, at which Complainant appeared *pro se*, and Respondent was represented by Larry R. Crayne, Esquire. Mr. Kacer testified on his own behalf and Respondent presented one witness. Mr. Kacer offered one exhibit, marked and admitted as Complainant Exhibit 1; and Respondent offered thirteen exhibits, marked and admitted as UGI Exhibits 1 through 13. Complainant and Respondent issued final statements on the record. The transcript of the hearing contains eighty-nine (89) pages and was received on August 29, 2022.

On September 1, 2022, the presiding officer closed the hearing record by issuing the Interim Order Closing the Hearing Record.

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<sup>1</sup> PA One-Call, sometimes referred to as "811" or "811 One Call," is a non-profit corporation created to protect underground facilities before excavation. Whether property owners, excavators, contractors, plumbers, builders, etc. with one call to a 1-800 number, individuals and entities can find out where underground lines are located. When receiving a call, Pennsylvania One Call notifies member underground facility owners (such as UGI) of the intent to excavate, which prompts the facility owner to go to the site and mark where the lines are located. *Gas and Hazardous Liquids Pipelines Act* (Act 127 of 2011) (enacted December 22, 2011); See also, *Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators – Jurisdiction over Class 1 Transmission*, Docket No. M-2012-2282031 (Final Order June 7, 2012).

## FINDINGS OF FACT

1. Complainant, Stephen Kacer, owns a residence located at 110 Wayne Street, Carbondale, Pennsylvania (service address) and the adjoining property located at 106 Wayne Street, Carbondale, Pennsylvania (106 Wayne Street), on which a mobile home is located. (Tr. 14, 15, 73; UGI Exhibit 13).
2. Respondent, UGI Utilities, Inc., provides natural gas service to Complainant at the service address. (Tr. 15).
3. Complainant bought the service address in 1979 and built the residential structure. (Tr. 24-35).
4. Respondent installed the natural gas distribution and service lines on January 24, 1990. (Tr. 35, 59).
5. Respondent's records indicate a four-inch (4") main gas line was installed in 1990 to a depth of two feet, five inches but the one-inch service line could have been at a depth of eighteen (18") inches. (Tr. 37, 38, 48, 58, 60, 67, 68; UGI Exhibit 1).
6. UGI replaced the steel main gas line on Wayne Street with a four-inch (4") plastic pipe in October 2000. (Tr. 62; UGI Exhibit 2).
7. Respondent installed a service valve above ground on the service address near a row of ash trees to mark the location of an underground gas facility. (Tr. 63; UGI Exhibit 3).
8. Prior to May 14, 2021, the local electric distribution company cut down four dead ash trees which were situated over the service line in the service address' front yard, leaving stumps that were approximately one foot in height. (Tr. 28-31, 73; UGI Exhibit 13).

9. Sometime in 2021, Complainant called 811 One Call and requested that relevant utilities mark the location of any underground utility facilities located at the service address. (Tr. 31, 32, 56, 57).

10. Complainant no longer had a valid, unexpired One Call permit but the flags or orange marks, indicating the location of the underground facilities, remained at the service address from the time Complainant contacted One Call, even though the One Call permit had expired by May 14, 2021. (Tr. 56, 75).

11. No marks or flags indicating the presence of underground facilities were present at the service address on May 14, 2021. (Tr. 76, 77).

12. Complainant knew the location of the service line in the front yard from personal knowledge of its installation and the flags or marks from the expired One Call permit. (Tr. 53, 56, 57, 64).

13. On May 14, 2021, Complainant used a mini-excavator equipped with a claw and he used hand shovels to remove the ash tree stumps. (Tr. 16, 28-31, 56, 73; UGI Exhibit 13).

14. Complainant hit UGI's service line, and the service line was damaged when Complainant hit the service line with a bobcat mini-excavator. (Tr. 16, 28-31, 56, 73; UGI Exhibit 13).

15. There was no tracer or caution tape,<sup>2</sup> gravel or pipe bedding<sup>3</sup> seen on or near the service line on May 14, 2021. (Tr. 17, 23, 61).

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<sup>2</sup> Caution tape is a 4-inch wide colored vinyl tape imprinted to indicate what type of underground utility facilities are near. The tape is intended to be installed above the underground facilities and nearer the surface to serve as a warning when anyone starts digging near a pipeline. Tr. 40, 52.

<sup>3</sup> Pipe bedding is a layer of colored stone or sand, filled around and/or under a pipeline that is installed, to protect the pipeline and serve as indication a pipeline is near. Tr. 41.

16. Large tree roots were observed under and near the service line on May 14, 2021, and tree roots could have been a factor in raising the height of the service line. (Tr. 24, 42, 59).

17. After the service line was cut, Complainant made a plug to clamp the service line shut until Respondent's technicians arrived. (Tr. 25).

18. Complainant's employment involves excavation and construction, and he often must call One Call for work purposes. (Tr. 30-33).

19. After the service line was damaged on May 14, 2021, UGI replaced the main line plus the service line for the service address as well as for 106 Wayne Street. (Tr. 17, 44).

20. The four-inch (4") main gas line is located across the street (Wayne Street) from the service address, and the one-inch (1") plastic service line is approximately 130 feet in length, extending from the residence to the curb box (located at the junction of the main gas line and the service line). (Tr. 45, 58; UGI Exhibit 2).

21. UGI sent an invoice to Complainant for \$1,150.00, to cover the cost of the repairs when Complainant damaged the service line on May 14, 2021. (Tr. 68).

### DISCUSSION

Complainant alleges UGI failed to install the natural gas distribution pipeline properly in his front yard by installing the pipeline at a shallow depth, in violation of the building code. Complainant asserts he called One Call and knew the One Call permit had expired prior to May 14, 2021, when he started digging in his front yard. Complainant contends he saw no need to call again for a new permit because no digging had occurred in the interim and the flags were present still at the service address. Complainant contends UGI was in error to install the pipeline

improperly and in error to insist he must pay \$1,150, to cover the cost of repairing the broken pipeline. Complainant asks the Commission to order UGI to pay for the cost of repairs.

### Responsibility of Public Utility

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

66 Pa.C.S. § 1501.

The Commission has the authority and responsibility to define reasonable service under 66 Pa.C.S. § 1501 and § 1502. The Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities.<sup>4</sup> The term "service" should be "used in its broadest and most inclusive sense, including 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...."<sup>5</sup>

### Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof by substantial evidence. 66 Pa.C.S. § 332(a). Substantial evidence is defined as such evidence that a reasonable mind might accept as adequate to support a

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<sup>4</sup> *Elkin v. Bell Telephone of Pa.*, 420 A.2d 371 (Pa. 1980).

<sup>5</sup> 66 Pa.C.S. § 102.

conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>6</sup>

Upon a complainant's presentation of evidence sufficient to satisfy the initial burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, may shift to the public utility and require it to rebut the evidence of the complainant. If the evidence presented by the public utility is of co-equal value or weight, the burden of proof has not been satisfied by that complainant. A complainant still must provide additional evidence to rebut the contrary evidence presented by the public utility.<sup>7</sup>

### Complainant's Position

Complainant admits he was the one who damaged the service line when he dug in his front yard trying to remove the tree stumps left by the electric distribution company. Complainant argues he should not be responsible for the cost of repairing the service line because UGI failed to construct the gas line properly when it installed the service line. Complainant contends he made a call to One Call and saw where the line was marked but admits the One Call permit had expired. As proof that he called, Complainant points to orange paint marks on the ground in one of the pictures admitted into evidence.

As additional proof that UGI caused the problem, Complainant contends Respondent returned soon after the service line was repaired and UGI replaced the entire service line with a pipe that was constructed at a deeper depth underground. Complainant insists he was carefully digging on the surface of the ground when he hit the service line on May 14, 2021 and the sole reason the gas line was damaged was because Respondent failed to install the pipeline down to the proper depth.

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<sup>6</sup> *Norfolk & Western 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); *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

<sup>7</sup> *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd* 461 A.2d 1234 (Pa. 1983) and *Morrissey v. Pa. Dep't of Highways*, 225 A.2d 895 (Pa. 1967).

## Respondent's Position

UGI argues Complainant must pay for the cost of the repaired service line because he damaged the service line. UGI argues Complainant did not cite specifically to any relevant provisions in the Public Utility Code, the Commission's regulations and orders, or in UGI's tariff. UGI argues Complainant did not show that there was any notation or records in UGI's files to indicate that the service line was installed incorrectly, and that Complainant failed to meet the burden of proving UGI did not construct the pipeline properly. Further, UGI argues Complainant did not show he called One Call to request UGI, inter alia, mark its underground facilities.

## Analysis

Complainant damaged the service line for his residence when he used an excavator to dig up tree stumps in his front yard. The evidence did not indicate clearly the depth of the service line on May 14, 2021 but the utility's records indicate the lines were installed at a depth of approximately two feet. Mr. Kacer works in excavation and is familiar with the need to have pipelines marked by One Call. Due to his work, Mr. Kacer is also aware that care must be taken when digging near pipelines, especially natural gas pipelines, where the exact depth of the pipelines cannot be known.

It is noted that UGI did not present any witness who was present at the service address at or about May 14, 2021, who could specify what exactly was the depth of the service line and/or the circumstances surrounding the damage to the service line. (Tr. 74). In addition, the witness presented by UGI had not visited the location and was unaware that the service line was replaced shortly after the damaged pipeline was repaired in May 2021. (Tr. 79). Furthermore, it is noted that if Complainant had a valid One Call permit, the relevant utilities would have marked the surface to indicate the location of the underground facilities. Complainant would have known then the exact location of the underground facilities.

Despite knowing extra care must be taken around a natural gas pipeline and claiming to know the location of the pipelines in his front yard, Complainant chose to use an excavator instead of digging out the tree stumps using a shovel. As a result, Mr. Kacer damaged the service line. It is irrelevant that Respondent chose after the damage occurred to replace the steel pipeline with a plastic pipeline in Mr. Kacer's neighborhood. Mr. Kacer dug up his yard without a valid One Call permit and while using an excavator, instead of using a shovel to carefully remove the dirt over and near the service line when he chose to remove the tree stumps. UGI was correct to require Mr. Kacer to pay for the cost of replacing the damaged service line. Accordingly, Mr. Kacer's formal complaint will be denied in the Ordering Paragraphs that follow.

#### CONCLUSIONS OF LAW

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

2. Complainant carries the burden of proving Respondent failed to provide reasonable and adequate customer service when it installed the service line at his residence. 66 Pa.C.S. §§ 1501, 332.

3. Complainant carries the burden of proving Respondent failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities which resulted in the damaged service line on May 14, 2021. 66 Pa.C.S. §§ 1501, 332.

4. Complainant failed to meet the burden of proving Respondent did not provide reasonable and adequate customer service when Respondent required Complainant to pay the repair costs for the damage to the service line on May 14, 2021. 66 Pa.C.S. §§ 1501, 332.

5. Complainant failed to meet the burden of proving Respondent did not furnish and maintain adequate, efficient, safe, and reasonable service and facilities which led to the damaged service line on May 14, 2021. 66 Pa.C.S. §§ 1501, 332.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Stephen Kacer v. UGI Utilities, Inc. at Docket No. C-2022-3032350 is hereby denied.
2. That Stephen Kacer is responsible to pay for the costs to repair the service line damaged on May 14, 2021 at the service address.
3. That the Secretary shall mark the docket of Stephen Kacer v. UGI Utilities, Inc. at Docket No. C-2022-3032350 as closed.

Date: October 24, 2022

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/s/  
Katrina L. Dunderdale  
Administrative Law Judge