

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephanie D. Jenkins	:	
	:	
v.	:	C-2023-3038917
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision sustains the Complaint of Stephanie D. Jenkins as she met her burden of demonstrating that Philadelphia Gas Works provided her with inadequate and unreasonable service in violation of 66 Pa.C.S. § 1501. Consequently, a \$1,000 civil penalty will be assessed against Philadelphia Gas Works for this violation.

**HISTORY OF THE PROCEEDING**

On March 8, 2023, Stephanie D. Jenkins (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that in April 2022, PGW’s contractors replaced gas lines in her neighborhood. The Complainant alleged that on September 21, 2022, she experienced a water main break requiring a new pipeline. As relief, the Complainant indicated that she would like the Commission to investigate whether PGW’s gas line replacement caused a bend in her water main pipe.

On April 4, 2023, the Respondent filed an Answer denying that there is a reliability, safety or quality problem with the utility service at 805 Atwood Road, Philadelphia, PA (service address).

By Initial Telephonic Hearing Notice dated April 5, 2023, an initial call-in telephonic hearing was scheduled for May 18, 2023 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on April 12, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on May 18, 2023. The Complainant appeared *pro se* and testified. The Complainant also presented the testimony of her husband, William C. Thompson. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Patricia Bernard, a PGW Customer Review Officer, and Michael Kahlert, a PGW Distribution Field Supervisor. The Respondent submitted seven exhibits, all of which were admitted into the record (PGW Exhs. 1-7).

The record closed on June 8, 2023, the date the transcript was filed with the Commission.

#### FINDINGS OF FACT

1. The Complainant in this case is Stephanie D. Jenkins.
2. The Respondent in this case is Philadelphia Gas Works.

3. The Complainant resides at 805 Atwood Road, Philadelphia, PA 19151 (service address). Tr. 19.

4. The Complainant receives water service from the Philadelphia Water Department (PWD). Tr. 20.

5. The Complainant is responsible for any repairs that must be performed on PWD pipelines servicing her home. Tr. 21.

6. PGW hired a Contractor, CTX Infrastructure, to replace the gas main for the 700 block of Atwood Road through the 1,000 block of Atwood Road. Tr. 46-47.

7. CTX Infrastructure performed the gas main replacement work on Atwood Road between September 4, 2021 and February 10, 2022. Tr. 46-47.

8. CTX Infrastructure dug a trench for the gas main along the curb in front of the service address. Tr. 67; PGW Exh. 7.

9. On April 25, 2022, PGW tied the service address into the new gas main. Tr. 48, 66-67.

10. Neither PGW nor a contractor working for PGW performed any work at this location after April 25, 2022. Tr. 48.

11. On or about September 21, 2022, the Complainant discovered that the PWD pipeline servicing her home was leaking up through the ground. Tr. 21-22, 26, 29, 49; PGW Exh. 1.

12. On September 21, 2022, the Complainant's husband contacted PGW to report the water leak and to obtain PGW's public affairs number. Tr. 49; PGW Exh. 1.

13. On September 21, 2022, PGW sent the Complainant a claim submission form. Tr. 50; PGW Exh. 2.

14. On September 21, 2022, PGW issued the Complainant a letter explaining PGW's water/sewer line damage policy. Tr. 50-51; PGW Exh. 3.

15. The Complainant submitted a claim form to PGW regarding the water main break near the newly installed gas main. Tr. 52; PGW Exh. 4.

16. PGW's water/sewer line damage policy requires a customer to hire a plumber to excavate the water/sewer line and to give PGW two business days advance notice of the date and time the plumber will begin excavation. Tr. 51; PGW Exh. 3.

17. The Complainant hired a contractor to investigate the problem with the PWD pipeline servicing her home. Tr. 24.

18. On October 11, 2022, PGW personnel was present when the Complainant's contractor excavated the water line. Tr. 52, 62.

19. The Complainant's contractor discovered a small hole in the water line servicing her home. Tr. 34.

20. The PGW representative observed that the damaged pipe appeared to be slightly pinched inwards. Tr. 73.

21. The water line ran over top of the replaced gas main, intersecting the gas main. Tr. 73-74.

22. The PGW representative observed that the replaced gas main was a few inches away from the damaged section of the Complainant's pipeline. Tr. 74.

23. The Complainant's contractor had to dig up the street in front of her house in order to install a new water pipeline. Tr. 24.

24. Repairs to the water line cost the Complainant approximately \$4,500. Tr. 31.

25. On October 28, 2022, PGW issued a letter to the Complainant advising that PGW hired CTX Infrastructure to perform the work at this location, that PGW had placed CTX Infrastructure on notice of her claim, and that PGW denied any and all liability for damage caused to the Complainant's water service line. Tr. 53; PGW Exh. 5.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *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). A preponderance of the evidence is evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 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 and W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 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).

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).

The Complainant alleged that PGW and its contractors, CTX Infrastructure, damaged the water line servicing her house when replacing the gas main on her street. As a result of this damage, the Complainant had to pay \$4,500.00 to have her water line excavated and repaired. The Complainant has raised a claim of inadequate or unreasonable service.

PGW is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, provides, in relevant 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.

Interpreting this provision in *West Penn Power Co. v. Pennsylvaniaa Public Utility Commission*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. (footnote omitted).

*West Penn Power*, 478 A.2d at 949.

The statutory definition of “service” is to be broadly construed.<sup>1</sup> *Country Place Waste Treatment Company, Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PECO’s actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

The Complainant testified that her water line was damaged as a result of PGW’s gas main replacement performed on her street. The Complainant provided credible testimony that her water line was not damaged prior to the work performed by PGW’s contractor. It was only after PGW completed the main replacement on her street that the Complainant discovered a leak on her water line.

PGW witness, Michael Kahler, a PGW Distribution Field Supervisor, testified that he was present when the Complainant’s contractor excavated the water line. Tr. 62. Mr. Kahler observed that the damaged pipe appeared to be slightly pinched inwards. Tr. 73. Mr. Kahler further observed that the water line ran over top of the gas main, intersecting the gas main, and that the replaced gas main was a few inches away from the damaged section of the

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<sup>1</sup> “‘**Service.**’ 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 ... 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 (emphasis original).

Complainant's pipeline. Tr. 73-74. Moreover, Mr. Kahler acknowledged that the Complainant's water line could have been damaged as a result of the gas main replacement work done by its contractor:

Judge: So, while doing this main replacement, is it possible that they could have nicked this line from a few inches away?

Witness: That's a possibility.

Tr. 76.

The record demonstrates that the Complainant was not experiencing any issues with her water line prior to PGW's gas main replacement. Since the record is void of any evidence to the contrary, I can only conclude that the "pinch" or damage to the Complainant's water line, which is buried underground and inaccessible, was directly related to PGW's gas main replacement on the Complainant's street. Although PGW maintained that any damage caused during the gas main replacement was the responsibility of its contractor, CTX Infrastructure, CTX Infrastructure performed this work at PGW's behest. Ultimately, PGW is responsible for the end result of the gas main replacement. Accordingly, since the damage to the Complainant's water line was the result of PGW's gas main replacement, PGW failed to provide the Complainant with reasonable service.

The Complainant carried her burden of proof in establishing that PGW violated the Public Utility Code by failing to provide her with reasonable service while replacing the gas main on her street. Therefore, 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 Atlantic-Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Mar. 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.*, 2000 WL 33300688 (Pa.P.U.C. 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 69.1201 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.

The evidence demonstrates that, through its gas main replacement project on the Complainant's street, PGW failed to provide reasonable service to the Complainant as required by Section 1501 of the Code. This resulted in damages to the Complainant's water line, which cost her \$4,500 to repair. Accordingly, the following determinations are warranted under the *Rosi* factors and standards.

Regarding the first factor, PGW's gas main replacement project caused damage to the Complainant's water line. This caused a slow leak on the Complainant's property. However, there is nothing in the record to suggest that the damage caused to the Complainant's water line was anything more than an accident. This supports a lower penalty.

Regarding the second factor, the consequences of PGW's gas main replacement were serious in that it caused a water leak on the Complainant's property and resulted in the Complainant having to pay \$4,500 to repair damage for which she was not responsible. This supports a higher penalty.

Regarding the third factor, this was a litigated case. The evidence does not support a finding that PGW acted intentionally in this case. This supports a lower penalty.

Regarding the fourth factor, there is no evidence that PGW has made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. Therefore, the civil penalties mentioned above are warranted.

Regarding the fifth factor, there is no evidence that other customers were affected by PGW's violation of the Code. As for the duration of the violation, the record demonstrates that the Complainant's husband reported the leak to PGW on September 21, 2022, and the Complainant's contractor was on site for repairs on October 11, 2022. However, although PGW's policy requires a customer to hire a plumber to excavate the water/sewer line and give PGW two business days advance notice of the date and time the plumber would begin to excavate, there is nothing in the record to suggest or demonstrate that PGW was responsible for the delay in the Complainant scheduling a contractor to address the water leak.

Regarding the sixth factor, the record is silent as to PGW's compliance history. Moreover, there is nothing in the record to suggest that this was anything more than an isolated incident.

Regarding the seventh factor, there is nothing in the record to demonstrate that PGW was uncooperative with the Commission's investigation, or to find that PGW acted in bad faith.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. There is nothing in the record to demonstrate that this occurrence was anything more than an isolated incident.

The ninth factor examines past Commission decisions in similar situations. No similar situations were found.

Finally, as to the tenth factor which considers any other relevant factors, there are no other relevant factors to consider that would warrant a higher or lower penalty.

Upon review of each of these factors, PGW will be ordered to pay a penalty of \$1,000 for the damage caused to the Complainant's water main in the course of its gas main replacement project.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.
4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

5. The Complainant met her burden of demonstrating that PGW provided her with inadequate and unreasonable service. 66 Pa.C.S. § 332(a).

6. The Commission is authorized to impose civil penalties up to \$1,000 for each violation of the Code, its regulations or its orders. 66 Pa.C.S. § 3301.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Stephanie D. Jenkins against Philadelphia Gas Works at Docket No. C-2023-3038917 is sustained.

2. That Philadelphia Gas Works is hereby assessed a penalty of One Thousand Dollars (\$1,000) because the Respondent failed to provide the Complainant with reasonable service in violation of Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501.

3. That within thirty (30) days of the Commission's Final Order in this case, Philadelphia Gas Works shall pay a civil penalty in the amount of One Thousand Dollars (\$1,000) by sending a certified check or money order payable to the Commonwealth of Pennsylvania addressed to:

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

4. That if Philadelphia Gas Works fails to make the civil penalty payment within thirty (30) days of the entry date of the Final Commission Order, it is further ordered

