

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martini	:	
	:	
v.	:	C-2022-3033942
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint filed by Francene Tearpock-Martini against UGI Utilities, Inc. Ms. Tearpock-Martini failed to satisfy her burden of demonstrating that UGI Utilities, Inc. violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with respect to the service provided to her at her home.

HISTORY OF THE PROCEEDING¹

On July 20, 2022, Francene Tearpock-Martini (Complainant or Ms. Tearpock-Martini) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI). In her complaint, Ms. Tearpock-Martini alleged that she was experiencing “harassment from [the] Utility Company following PUC Complaint regarding trespass on [her] property.” Complaint at p. 2. Ms. Tearpock-Martini alleged that the

¹ See my Order dated April 6, 2023 for a more extensive procedural history. The history most relevant for this ID is included herein.

harassment is a “consequence of [her] recent prior filing with the PUC to remedy trespass.” Complaint at p. 3. Ms. Tearpock-Martini further alleged that UGI was “violating the order of the Court” by “making threats” regarding plans to move an overhead wire to her specimen tree. Complaint at p. 3. Ms. Tearpock-Martini also maintained that UGI is requesting a right-of-way to keep an aerial wire at its current location on her property, and she would not grant a right-of-way “onto [her] historic property that [she] has developed over the 45 years that she [has lived] there.” Complaint at p. 3. She further maintained that her property “has been placed on the National Historic Register since 2009.” Complaint at p. 3. Ms. Tearpock-Martini attached to her Complaint a set of emails purportedly between her and PennDOT; maps; emails between her and UGI; pictures; deed information; and documentation regarding a civil action from the year 2014 between Ms. Tearpock-Martini and defendants Vincent Noble and Colleen Noble. Ms. Tearpock-Martini’s Complaint was served on UGI on July 21, 2022.

On August 10, 2022, UGI filed a timely answer and new matter, with a notice to plead attached, in response to Ms. Tearpock-Martini’s Complaint. In its answer, UGI denied Complainant’s allegations of harassment. UGI averred that its recent contacts with Complainant were professional and cordial as an attempt to try and work with Complainant “as directed by the Commission to eliminate an inadvertent non-hazardous aerial encroachment of line conductors over a small corner of Complainant’s property.” Answer at p. 1. UGI cited to the case in which this was addressed by the Commission: *Francene Tearpock-Martini v. UGI Utilities, Inc.*, Docket No. C-2021-3027093 (Order entered Mar. 10, 2021) (*Tearpock-Martini*).

UGI further denied making any threats to Ms. Tearpock-Martini. UGI averred that Mr. Bokrosh, one of its senior technicians, discussed moving the single-phase primary line conductor from its current location to a pole located on her other property, to remove it from her airspace. Answer at pp. 1-2 (*see also Tearpock-Martini* at 6-7). UGI further averred that Complainant stated that such action may harm her “specimen tree,” and UGI therefore offered to keep the primary line in its current location, which would require a right-of-way to remedy the existing aerial encroachment. Answer at p. 2. UGI averred that Complainant would not agree to grant the right-of-way, and UGI therefore plans to move the primary line to the secondary location as approved by the Commission. Answer at p. 2 (*see also Tearpock-Martini* at 6-7, 15-

16). UGI further averred that Ms. Tearpock-Martini “litigated [right-of-way] issues (and had the opportunity to litigate them) in her last Formal Complaint[, and] she should be prevented from doing so here again.” Answer at p. 3.

In its new matter, which was accompanied by a notice to plead, UGI averred that on November 16, 2021, Administrative Law Judge Elizabeth Barnes (Judge Barnes or ALJ Barnes) issued a decision denying Ms. Tearpock-Martini’s 2021 complaint and finding that Complainant “failed to satisfy her burden to demonstrate that UGI violated the Public Utility Code, a Commission order or regulation, or its Commission-approved tariff regarding the installation of a replacement utility pole in a public right-of-way.” Answer at p. 4. Moreover, UGI highlighted that Judge Barnes further stated that she is not directing UGI to proceed with implementation of one of the three options described by the engineers at the hearing, but she agreed that its preferred option seemed reasonable to remove the aerial guy wires from Complainant’s airspace. Answer at pp. 4-5. UGI quoted the portion of Judge Barnes’ Initial Decision in which she encouraged the parties to work together to implement the removal of the wire. Answer at p. 5. UGI further explained that exceptions and replies to exceptions were filed, and on March 10, 2022, the Commission issued an Opinion and Order denying Complainant’s exceptions and adopting the decision of Judge Barnes. Answer at p. 5.

UGI further noted the Commission’s statements in its final Opinion and Order that UGI has “reasonably offered remedial options and attempted to remedy the inadvertent aerial encroachment of 2.5 feet . . . [and] Ms. Tearpock-Martini has rebuffed such efforts and ordered UGI’s personnel off of her land.” Answer at p. 5 (*see also Tearpock-Martini* at p. 15). UGI averred that the harassment alleged by Ms. Tearpock-Martini is its continued efforts to work with Ms. Tearpock-Martini to eliminate the aerial encroachment. Answer at p. 5.

UGI argued in its new matter that Complainant’s most recent Complaint is “an attempt to re-litigate the issues addressed and ruled on by the Commission in the prior proceeding regarding trespass, right-of-way access, and the Company’s right to locate and reconfigure its electrical facilities at/near her properties.” Answer at p. 5. UGI cited case law and Commission regulations and argued that a party is precluded from re-litigating a prior final

order of the Commission. Answer at pp. 5-6. UGI further argued that the doctrines of collateral estoppel and *res judicata* would prevent Complainant from re-litigating the issues raised in her current Complaint. Answer p. 6. UGI therefore requested that the instant Complaint be dismissed.

On August 19, 2022, Ms. Tearpock-Martini filed a reply to UGI's answer and new matter to the complaint. Commission regulations do not allow for replies to answers. 52 Pa. Code § 5.1. Therefore, the reply to answer was not considered in this proceeding. In the reply to UGI's new matter, Ms. Tearpock-Martini contended, among other things, that UGI has not offered a reasonable solution to remedy its aerial encroachment; that UGI has not provided a Certificate of Liability coverage allowing them to have a hazardous wire over her property; and that she is "troubled that she cannot go back and relitigate a case finalized based on false information."²

On October 18, 2022, UGI filed a motion for judgment on the pleadings (Motion). In its Motion, which was accompanied by a notice to plead, UGI argued that it is entitled to judgment as a matter of law as the pleadings show that there is no genuine issue as to a material fact. Specifically, UGI argued that the issue of the aerial wire encroachment, and the option of moving the wire from its current pole to a pole across the street, was decided by the Commission, and the Complainant did not appeal the Commission's Opinion and Order. UGI further argued that Complainant subsequently filed a 2022 Complaint, in which she argued that UGI is making threats regarding putting overhead wires by her specimen tree (by the pole across the street). UGI went through the details of prior litigation and asserted that Complainant filed her 2022 Complaint to get "another bite at the apple (*i.e.*, to relitigate her issues and claims from the 2021 Complaint." Motion at p. 11. UGI further argued that the claims in Complainant's 2022 Complaint are "continued efforts by Ms. Tearpock-Martini to dispute ALJ Barnes' Initial Decision and the Commission's Order from the 2021 Complaint." Motion at p. 11.

² Complainant mentions that 66 Pa.C.S. § 316 states that a final order of the Commission cannot be re-litigated unless set aside, annulled or modified on judicial review. Complainant requests judicial review "so as to prevent further hardship to complainant." Reply at p. 7. The proper way to challenge a Commission order is by appeal. Administrative Law Judges at the Commission do not have the authority to review a final Commission order.

UGI also asserted that there was a final judgment on the issues raised in Complainant's 2021 complaint and no appeal was filed by Complainant seeking to challenge or overturn the Commission's Order. Motion pp. 14-15. UGI therefore requested that the instant Complaint be dismissed. UGI attached to its motion information related to a 2008 complaint by Complainant at docket number F-2008-2022125; and information related to Complainant's recent 2021 Complaint at docket number C-2021-3027093.

On November 2, 2022, a call-in telephonic hearing notice was served setting an initial call-in telephonic hearing for this case for December 13, 2022, at 10:00 a.m., and assigning me as the presiding officer.³ A prehearing order was also served on November 2, 2022, setting forth rules and expectations for the hearing. A hearing cancellation notice was served on November 22, 2022, to allow for the motion for judgment on the pleadings to be decided prior to a hearing.

Ms. Tearpock-Martini filed an answer to UGI's Motion (Reply to Motion) on November 7, 2022.⁴ At the beginning of her Reply to Motion, Ms. Tearpock-Martini stated, "this present case is about bullying threats, intimidation and harassment by UGI Utilities, Inc. employees." Reply to Motion at p. 1. Ms. Tearpock-Martini argued that UGI employees were threatening that if she did not "comply with their request for a ROW, they will take action which will cause further damage to her property with extensive maintenance costs, safety hazards and liability." Reply to Motion at p. 1. Ms. Tearpock-Martini then argued that "the current issues 2022 are not the same issues . . . [t]hese are threats, bullying and harassment issues." Reply to Motion at p. 1. Ms. Tearpock-Martini discussed details from her prior 2008 and 2021 complaints

³ This notice was inadvertently issued as office staff did not see the pending motion at the time of issuance.

⁴ An informal call was held on November 17, 2022, to clarify the issues raised in the motion for judgment on the pleadings and reply to the motion. During the informal discussion, which lasted approximately three hours, the parties came very close to potentially resolving the issues. The Complainant also indicated a need to find and speak with an attorney, or other representative, about the options posed for potential settlement. I therefore initially deferred my ruling on the motion to provide the parties with time to potentially reach a solution to this matter.

before the Commission. Ms. Tearpock-Martini reiterated that “this 2022 Complaint is about Harassment [sic] . . . by employees of UGI Utilities.” Reply to Motion at p. 8.

Ms. Tearpock-Martini specifically stated towards the end of her Reply to Motion that the “Identity of Issues of [the] 2021 Complaint were involving trespass of ‘guy wires’ . . . Identity of Issues in 2022 involve Harassment [sic] . . . with relocation of aerial wires to different location of property.” Reply to Motion at p. 11. While Ms. Tearpock-Martini discusses in great detail issues raised in the litigation concerning her 2021 complaint, she asserted that the “Identity of the issues [in the] 2021 and 2022 Formal Complaints are not identical. They are not even remotely similar.” Reply to Motion at p. 11. Ms. Tearpock-Martini alleged that “UGI Utilities is attempting to obtain a ROW to Complainant’s historic property by force using threats.” Reply to Motion at p. 14. Ms. Tearpock-Martini requested that her Complaint not be dismissed. Ms. Tearpock-Martini attached to her answer her reply to UGI’s answer in the instant proceeding; property deed and map information; documentation from a 2009 civil action against Vincent Noble and Colleen Noble; documentation from the previous 2021 litigation at docket number C-2021-3027093 (including Judge Barnes’ Initial Decision and her exceptions to Judge Barnes’ decision); and photographs purportedly from the year 2008.

On April 6, 2023, I issued an Order denying UGI’s Motion for Judgment on the Pleadings and limiting the scope of what would be addressed in the current litigation to the issue of harassment. I acknowledged that Complainant spoke in great detail in her pleadings regarding the 2021 litigation, and several of the issues that she discussed were identical to those addressed and finally disposed of, by the Commission in its final Opinion and Order. *Tearpock-Martini v. UGI Utils., Inc.*, Docket No. C-2021-3027093 (Order entered Mar. 10, 2021) (*2021 Order*). However, I also acknowledged that Complaint’s claim of “harassment” had not yet been litigated before the Commission, and as she specified that the 2022 Complaint regarded the issue of harassment, I allowed her to proceed with a hearing on that new issue. *See* April 6, 2023 Order.

Also on April 6, 2023, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for May 16, 2023 at 10:00 a.m. In

anticipation of that hearing, I served a prehearing order on April 6, 2023, setting forth hearing information and the rules that would govern the proceeding.

The hearing was held as scheduled on May 16, 2023 at 10:00 a.m. Ms. Tearpock-Martini appeared on behalf of herself, and Devin T. Ryan, Esquire, and Timothy McHugh, Esquire, attended on behalf of UGI, along with three witnesses for UGI. One exhibit submitted by Ms. Tearpock-Martini was admitted into the record.⁵ At the end of the May 16, 2023 hearing, I encouraged the parties to continue with settlement discussions, and I asked the parties to let me know if they reached a resolution. Tr. 107.

The May 16, 2023 transcript of the hearing was filed with the Commission on June 5, 2023. The record in this case closed on June 26, 2023, after allowing time to ensure that the case did not immediately settle.

FINDINGS OF FACT

1. The Complainant is Francene Tearpock-Martini.
2. The Respondent is UGI Utilities, Inc.
3. The Complainant's service address is 56 South Main Street, Shickshinny, PA 18655.
4. George Bokrosh, a senior engineering technician for UGI, has communicated with Ms. Tearpock-Martini a total of six times between April 20, 2022 and July 7, 2022, following the Commission's Order regarding the 2021 complaint. Tr. 29-30, 32-35; *see 2021 Order*.

⁵ The Exhibit is a copy of Ms. Tearpock-Martini's 2022 Complaint. Several attachments to that Complaint were not admitted, as they were not relevant to the instant litigation. Any references in that Complaint to those attachments are deemed stricken for purposes of this litigation.

5. The purpose of the communications was to discuss the options to remedy the aerial wire encroachment on Ms. Tearpock-Martini's property, as encouraged by the Commission in its 2021 Order. Tr. 32; *2021 Order* at pp. 15-16.

6. During an in-person meeting on May 12, 2022, Mr. Bokrosh and Mr. Devine showed Ms. Tearpock-Martini where the UGI work would be completed, including installation of a sidewalk guy wire and movement of the aerial line. Tr. 34.

7. Byran Devine, an Engineer 1 for UGI Utilities, has communicated with Ms. Tearpock-Martini five times following the Commission's 2021 Order. Tr. 55-56.

8. Mr. Devine's communications with Ms. Tearpock-Martini were at the same time as Mr. Bokrosh's, save the one call in June. Tr. 56-58.

9. Walter Grodzki, Principal Project Engineer for UGI Utilities, has communicated with Ms. Tearpock-Martini approximately five times, by phone and email, between July 6, 2022 and July 28, 2022, following the Commission's 2021 Order. Tr. 75-80.

10. UGI completed the installation of the sidewalk guy wire on July 7, 2022. Tr. 35.

11. During a phone call on July 8, 2022, Mr. Grodzki discussed the options to resolve the encroachment of the aerial wire, and a new option that they wanted Ms. Tearpock-Martini to consider. Tr. 78.

12. Ms. Tearpock-Martini asked Mr. Grodzki to come and meet with her in person. Tr. 83.

13. Mr. Grodzki did not meet with Ms. Tearpock-Martini in person because Mr. Bokrosh and Mr. Devine were already meeting with her. Tr. 83.

14. Mr. Grodzki's last communication with Ms. Tearpock-Martini was a phone call on July 28, 2022, when Mr. Grodzki advised that UGI would pause its plans to resolve the aerial encroachment in light of the new formal complaint filed with the Commission. Tr. 80.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Ms. Tearpock-Martini has the burden of proof with respect to her allegation of harassment against UGI.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Moreover, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960). A

complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Utility companies are required by law to provide adequate and reasonable service. Section 1501 of the Public Utility Code states:

§ 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. This section does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super 1987).

Failure to Meet Burden

Ms. Tearpock-Martini testified that she was being harassed by UGI representatives. Tr. 9, 12. It is first noted that the Commission’s statute and regulations do not define the term, “harassment.” The Pennsylvania Crimes Code contains a clear definition of harassment.⁶ While it is my opinion that the evidence of record does not support a finding of harassment by UGI under the Crimes Code, the Commission does not have the jurisdiction to

⁶ Under the Crimes Code, a person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same; (2) follows the other person in or about a public place or places; (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose; (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures; (5) communicates repeatedly in an anonymous manner; (6) communicates repeatedly at extremely inconvenient hours; or (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6). 18 Pa.C.S.A. § 2709(a).

make determinations under the Crimes Code. Instead, the Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *see also Pettko v. Pa. Am. Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012). The Commission’s jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission has not been given the power to make legal determinations under the Crimes Code. Therefore, the claim of criminal harassment would need to be brought before the proper venue. I must analyze the Complainant’s claims under the Commission’s statutes and regulations.

Under Section 1501 of the Code, UGI is required to “make all such repairs, changes . . . and improvements in or to such . . . facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons.” 66 Pa.C.S. § 1501. Consistent with this statute, UGI has attempted to contact Complainant to proceed with a plan to move its aerial service line that is currently encroaching on Ms. Tearpock-Martini’s property. UGI provided testimony that three of its employees, George Bokrosh, Bryan Devine and Walter Grodzki have communicated with Ms. Tearpock-Martini in an attempt to proceed with the options addressed by the Commission in 2021 to remedy the encroachment. Mr. Bokrosh has worked for UGI for 38 years and 5 months, and he has been in his current position with UGI for three years. Tr. 29. Mr. Bokrosh is responsible for inspection and maintenance inspection programs, the replacement of reject poles and line protection. Tr. 29. Byran Devine, an Engineer 1 for UGI Utilities, is in charge of designing and implementing new business services and project improvements for UGI’s electric system. Tr. 55. He has been with the company for more than two years. Tr. 54-55. Walter Grodzki, Principal Project Engineer for UGI Utilities, performs engineering projects and oversees engineering and operation programs. Tr. 76. He has been employed with UGI for 33 years, and in his current position for six years. Tr. 75. It is reasonable for these employees to seek to speak with Ms. Tearpock-Martini about work that needs to be completed by UGI. UGI was able to complete the work to install a sidewalk guy wire on July 7, 2022, but it has not yet

reached an agreement with Ms. Tearpock-Martini to remedy the encroachment of the aerial wire on her property, as addressed in the prior 2021 litigation. *2021 Order*.

UGI has discussed the options for remedying the encroachment of that aerial wire with Ms. Tearpock-Martini on several occasions. Mr. Bokrosh testified that he has communicated with Ms. Tearpock-Martini six times, by phone or in person, between April 2022 and July 2022, following the Commission's 2021 Order. Tr. 29-30, 32-35; *see 2021 Order*. Mr. Devine communicated with Ms. Tearpock-Martini five times during that time period, as he was a part of each phone call or meeting with Mr. Bokrosh, save one phone call in June. Tr. 56-58. Mr. Bokrosh testified that the purpose of contacting Ms. Tearpock-Martini was to discuss the options to remedy the aerial wire encroachment on Ms. Tearpock-Martini's property, as encouraged by the Commission in its 2021 Order. Tr. 32; *2021 Order* at pp. 15-16. During an in-person meeting on May 12, 2022, Mr. Bokrosh and Mr. Devine showed Ms. Tearpock-Martini where the proposed UGI work would be completed, including installation of a sidewalk guy wire and movement of the aerial line. Tr. 34.

Mr. Grodzki testified that he has also communicated with Ms. Tearpock-Martini approximately five times, by phone and email, between July 6, 2022 and July 28, 2022, following the Commission's 2021 Order. Tr. 75-80. The purpose of Mr. Grodzki's communications was also to discuss the options of moving the aerial wire with Ms. Tearpock-Martini. Tr. 78. There is no evidence that UGI has proceeded with the implementation of the aerial wire encroachment remedy, as it has not yet reached an agreement with Ms. Tearpock-Martini. The record evidence shows that Ms. Tearpock-Martini asked Mr. Grodzki to come and meet with her in person to discuss the options, but he did not as other employees were already meeting with her. Tr. 83. Mr. Grodzki's decision to not meet with Ms. Tearpock-Martini in light of other employees meeting with her is a reflection of reasonable behavior by a UGI employee. Moreover, it is notable that UGI has not yet proceeded with any of its options without Ms. Tearpock-Martini's agreement; it is first seeking to reach an agreement with Complainant on a way to remedy the encroachment. The evidence of record supports a finding that UGI exhibited reasonable service by working with Ms. Tearpock-Martini, as it was encouraged to do,

to seek a solution to the aerial encroachment over Ms. Tearpock-Martini's aerial space. *See 2021 Order* at pp. 15-16.

Lastly, Black's Law Dictionary, generally defines harassment as "Repeated conduct that is not wanted and is known to all parties as offensive." *Harassment, Black's Law Dictionary* (2nd ed. 1995). Based on the evidence of record, I do not find that UGI's behavior can be classified as "harassment," under this definition; UGI's behavior is instead a reasonable attempt to implement the options approved by the Commission in its 2021 Order.

Conclusion

The evidence of record does not support a finding that UGI's contacts with Complainant were unreasonable. In her response to UGI's Motion for Summary Judgment, Ms. Tearpock-Martini asserted that she was not seeking to relitigate issues from her 2021 Complaint, but she was instead alleging harassment by UGI. Ms. Tearpock-Martini was provided an opportunity to appear at a hearing and provide support of the new claim of harassment that she alleged in her Complaint. However, Ms. Tearpock-Martini provided no evidence of such harassment.

Accordingly, for the reasons stated above, Ms. Tearpock-Martini has failed to satisfy her burden of demonstrating that UGI violated the Public Utility Code, a Commission order or regulation as it relates to the allegations of harassment, and, therefore, her Complaint is dismissed.

CONCLUSIONS OF LAW

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

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might 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 Rev., 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. The Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *see also Pettko v. Pa. Am. Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012).

10. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

11. Utility companies are required to provide reasonable service. 66 Pa.C.S. § 1501.

12. Black's Law Dictionary defines harassment as "Repeated conduct that is not wanted and is known to all parties as offensive." *Harassment, Black's Law Dictionary* (2nd ed. 1995).

13. UGI's contacts with Complainant were reasonable and an attempt to implement the resolution options approved by the Commission in its 2021 Order. 66 Pa.C.S. § 1501.

14. Ms. Tearpock-Martini has failed to satisfy her burden to demonstrate that UGI has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

