

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald Roseberry	:	
	:	
v.	:	C-2023-3044708
	:	
UGI Utilities, Inc. - Gas Division	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

A customer filed a Formal Complaint against his natural gas distribution company alleging that the company took an excessive amount of time to complete his request to switch him to a different natural gas supplier. The Complainant argues that switching his natural gas supplier should have happened more quickly. The Complaint will be dismissed because Complainant has failed to prove by a preponderance of the evidence that the utility violated the Pennsylvania Public Utility Code, a Commission regulation or order, or a provision of the utility’s Commission approved tariff.

HISTORY OF THE PROCEEDING

On or about December 2, 2023, Donald Roseberry (Complainant or Mr. Rosebery) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. – Gas Division (UGI). In his Complaint, Mr. Roseberry alleges that it took too long for UGI to switch his natural gas supplier. By way of relief, he stated, “[s]tart my new service on December 22nd at the lower rate. What was the point in me switching to get a lower rate.” Complaint, ¶5.

On December 21, 2023, UGI filed an Answer with New Matter and Preliminary Objections (POs) in response to Mr. Roseberry's Complaint. In its Answer, UGI denied that it was required to switch Mr. Roseberry's natural gas supplier sooner than it did. It averred that the switch was made in compliance with the company's Commission-approved tariff. In its New Matter, UGI again averred that it switched Mr. Roseberry's natural gas supplier in full compliance with its tariff. In its POs, UGI sought dismissal of the Complaint on the basis that it cannot be held liable for actions that were made in compliance with the Commission's natural gas switching regulations and the company's Commission-approved tariff.

By Interim Order dated January 9, 2024, Administrative Law Judge Chad Allensworth denied UGI's POs.¹ Judge Allensworth essentially stated that the Complainant should be given the opportunity to prove that the natural gas switching provisions in the company's tariff are unreasonable.

By Initial Call-In Telephone Hearing Notice dated February 12, 2024, a telephonic hearing was scheduled for March 27, 2024, at 10:00 a.m.

On February 28, 2024, a Judge Change Notice was issued assigning me as the presiding officer in this matter.

The hearing was convened as scheduled on March 27, 2024. Mr. Roseberry appeared and testified on behalf of himself. UGI was represented by Megan Rulli, Esquire. UGI presented the testimony of Jesse Tyahla, Director of Energy Supply and Planning. Mr. Tyahla sponsored five UGI exhibits, all of which were admitted into the record.

The record closed on April 18, 2024, upon my receipt of the transcript, and consists of a transcript of 60 pages and five UGI exhibits.

¹ By Motion Judge Assignment Notice dated January 29, 2024, this case was originally assigned to Judge Allensworth. Subsequently, by Judge Change Notice dated February 28, 2024, the case was re-assigned to me.

FINDINGS OF FACT

1. Complainant is Donald Roseberry, who resides at 1315 West Union Boulevard, Bethlehem, PA. Tr. 9-10.
2. Respondent is UGI Utilities, Inc.
3. Prior to November 29, 2023, Shipley Energy Company (Shipley) was Mr. Roseberry's natural gas supplier. Tr. 12; UGI Ex. 1.
4. On November 29, 2023, UGI received a request from Shipley to drop Shipley as Mr. Roseberry's natural gas supplier and return him to UGI. Tr. 22; UGI Ex. 2.
5. Upon receipt of the drop request from Shipley, UGI sent a letter to Mr. Roseberry confirming that he would be returned to UGI default service and informing him that the switch would become effective on December 21, 2023. Tr. 32; UGI Ex. 2.
6. Mr. Roseberry's natural gas supplier was switched from Shipley to UGI on December 21, 2023. Tr. 32; UGI Ex. 1.
7. On December 1, 2023, UGI received an enrollment request from City Power and Gas, LLC (City Power) to enroll Mr. Roseberry with City Power as his natural gas supplier. Tr. 12, 22; UGI Ex. 2.
8. Following its receipt of an enrollment request from City Power, UGI sent a letter to Mr. Roseberry confirming the enrollment request and informing him that the switch to City Power would become effective on January 23, 2024. Tr. 32; UGI Ex. 2.
9. Mr. Roseberry's natural gas supplier was switched from UGI to City Power on January 23, 2024. UGI Ex. 1.

10. When UGI receives a request prior to the 15th of any calendar month to switch a customer's natural gas supplier, the customer will be switched to the new supplier on the customer's regularly scheduled meter reading date in the calendar month immediately following the month the enrollment request was received. Tr. 36; UGI Ex. 5.

11. When UGI receives a request after to the 15th of any calendar month to switch a customer's natural gas supplier, the customer will be switched to the new supplier on the customer's regularly scheduled meter reading date in the second calendar month immediately following the month the enrollment request was received. Tr. 36; UGI Ex. 5.

12. The rate that UGI charged Mr. Roseberry for natural gas between December 21, 2023, when he was switched from Shipley, and January 23, 2024, when he was switched to City Power, was less than the rate he would have been charged by City Power if he has been switched to City Power when he first made the request. Tr. 20-25; UGI Ex. 3.

13. The natural gas supply chain process includes three components: production, transportation and distribution to end users. Tr. 40.

14. With respect to the transportation component, UGI maintains a portfolio of assets, including interstate pipeline capacity, delivered supply contracts, peaking supplies and pipeline storage. Tr. 40.

15. UGI's asset portfolio allows it to provide its customers with firm, reliable service throughout the year, including during times of cold weather and peak demand. Tr. 40.

16. Suppliers that are part of UGI's gas choice program are assigned a portion of the UGI natural gas asset portfolio in order to provide them a pathway on the transportation leg of the supply chain to enable them to deliver firm, reliable natural gas supply to their customers. Tr. 41.

17. The assignment of assets requires coordination between the various asset operators, including UGI, interstate pipelines and natural gas suppliers. Tr. 41.

18. The assignment of assets must occur in accordance with applicable Federal Energy Regulatory Commission rules and regulations. Tr. 41.

19. The switching timelines for electric distribution companies and natural gas distribution companies and not the same. Tr. 42.

20. Electric distribution companies do not have asset portfolios to maintain and manage, so they do not bear the burden of having to coordinate, assign and allocate a portion of an electricity asset portfolio to electricity choice suppliers. Tr. 43.

DISCUSSION

As the proponent of a rule or order in this proceeding, the Complainant has the burden of proof 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 established by presenting 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. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Comp. Appeal Bd. (Skirpan)*, 612 A.2d 434 (Pa. 1992). 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. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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, a complainant will prevail. If the utility rebuts Complainant's evidence, the burden of going forward with the evidence shifts back to a 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. *Replogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980); *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

The offense alleged 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 challenging a Commission-approved tariff provision, a Complainant bears a very heavy burden, as follows:

Because Pennsylvania courts have repeatedly held that tariff provisions previously approved by the PUC are prima facie reasonable, *Zucker v. Pennsylvania Public Utility Commission*, 401 A.2d 1377 (Pa. Cmwlth 1979), a complainant seeking to evade the effect of an existing tariff provision, such as Shenango, carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Id.*; see also *Brockway Glass Company v. Pennsylvania Public Utility Commission*, 437 A.2d 1967 (Pa. Cmwlth 1981).

Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n., 86 A.2d 910, 914 (Pa. Cmwlth. 1996).

Here, Mr. Roseberry alleges that it took too long for UGI to switch his natural gas supplier. He stated in his Complaint, “[s]tart my new service on December 22nd at the lower rate. What was the point in me switching to get a lower rate.” Complaint, ¶5. He testified that he requested to be switched to City Power around Thanksgiving but the switch to City Power did not occur until January 23, 2024. Tr. 11. In support of his allegation, he testified, “when I made the switch, it just takes longer than I think it should. It’s like an extra month beyond what I think

it should.” Tr. 10. He testified that PPL can switch a customer’s electricity supplier much quicker. Tr. 10. Beyond merely expressing his belief and desire that the switch to City Power should have occurred more quickly, however, Mr. Roseberry presented no evidence or analysis to support his position or otherwise demonstrate that the applicable UGI tariff provisions are unreasonable.

UGI presented the testimony of Jesse Tyahla, Director of Energy Supply and Planning. Tr. 15. Mr. Tyahla explained that UGI received a request on November 29, 2023, to drop Shipley as Mr. Roseberry’s natural gas supplier. Tr. 31; UGI Ex. 2. Mr. Roseberry received a confirmation letter from UGI confirming the request to drop Shipley and informing him that he would be returned to UGI default service on December 21, 2023. Tr. 32; UGI Ex. 2. In fact, Mr. Roseberry was returned to UGI default service on December 21, 2023. Tr. 32.

Subsequently, UGI received an enrollment request on December 1, 2023, to switch his natural gas supplier to City Power. Tr. 32; UGI Ex. 2. Mr. Roseberry received a confirmation letter from UGI confirming the switch request to City Power and informing him that the switch would occur on January 23, 2024. Tr. 32; UGI Ex. 2. Mr. Roseberry’s natural gas supplier was, in fact, switched from UGI to City Power on January 23, 2024. Tr. 32.

In addressing the issue of the timing of the switch from Shipley to UGI default service to City Power, Mr. Tyahla referred to Rule 9 of the company’s tariff. UGI Ex. 5. He testified that, pursuant to its tariff, when UGI receives a request prior to the 15th of a month to switch a customer to a choice supplier, the switch will occur on the customer’s regularly scheduled meter read date in the calendar month immediately following the month the request was received and processed. Tr. 36; UGI Ex. 5. He further testified that, when UGI receives a request after the 15th of a month to switch a customer to a choice supplier, the switch will occur on the customer’s regularly scheduled meter read date in the second calendar month immediately following the month the request was received and processed. Tr. 36; UGI Ex. 5.

Mr. Tyahla next testified about the technical reasons why the switch to a new natural gas supplier takes longer than Mr. Roseberry believes it should take. He explained that the natural gas supply chain process includes three components: production, transportation and

distribution to end users. Tr. 40. With respect to the transportation component, Mr. Tyahla testified that UGI maintains a portfolio of assets, including interstate pipeline capacity, delivered supply contracts, peaking supplies and pipeline storage. Tr. 40. UGI's asset portfolio allows it and choice suppliers to provide customers with firm, reliable service throughout the year, including during times of cold weather and peak demand. Tr. 40.

Suppliers that are part of UGI's gas choice program are assigned a portion of the UGI natural gas assets portfolio in order to provide them a pathway on the transportation leg of the supply chain to enable them to deliver firm, reliable natural gas supply to their customers when needed. Tr. 41. The assignment of assets requires significant coordination between the various asset operators, including UGI, interstate pipelines and natural gas suppliers, and must occur in accordance with applicable Federal Energy Regulatory Commission rules and regulations. Tr. 41.

He noted that the switching requirements and timelines for electricity distribution companies and natural gas distribution companies are not comparable. Tr. 42. Mr. Tyahla testified that electricity distribution companies do not have asset portfolios to maintain and manage, so they do not bear the burden of having to coordinate, assign and allocate a portion of an electricity asset portfolio to electricity choice suppliers. Tr. 43. As a result, it takes much longer to process a natural gas supplier change request than to process an electricity supplier change request. Tr. 42.

Finally, Mr. Tyahla testified that Mr. Roseberry actually saved money by the switch to City Power occurring on January 23, 2024. He calculated the amounts that Mr. Roseberry would have been billed by Shipley, UGI and City Power for the commodity charge for the period from December 21, 2023, which is the date he was switched to UGI's default service, and January 23, 2024, which is the date he was switched to City Power. Mr. Tyahla testified that Shipley would have billed him \$93.89, UGI actually billed him \$74.80 and City Power would have billed him \$88.11. Tr. 23; UGI Ex. 3. Accordingly, if the switch to City Power had occurred on December 21, 2023, rather than January 23, 2024, he would have been charged \$13.31 more than he was charged by UGI. Tr. 23-24; UGI Ex. 3.

UGI's Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers. 66 Pa.C.S. § 1301; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1967 (Pa. Cmwlth. 1981) (*Brockway Glass*). Under Pennsylvania law, tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. Ct. 1996); *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997). Therefore, as noted above, a Complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Brockway Glass*.

Mr. Tyahla testified that UGI switched Mr. Rosebery's natural gas supplier in full compliance with the company's tariff. Mr. Roseberry merely expressed his opinion that the switch should have occurred quicker than it did. Beyond this, he presented no evidence demonstrating that UGI violated its obligations under the Code, a Commission order or its own tariff, nor did he present any evidence demonstrating that the applicable UGI tariff provisions are unreasonable. His personal opinions alone are insufficient to show a violation of a Commission regulation, order or statute. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Even a *pro se* Complainant must provide relevant and necessary information to support a claim. *Groch v. Unemployment Comp. Bd. of Rev.*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Rev.*, 494 A.2d 1081 (Pa. 1985).

Accordingly, for the above reasons, I find Complainant has failed to prove by a preponderance of the evidence that Respondent violated a Commission Order, regulation or statute of the Public Utility Code, or a provision of its tariff, or that the applicable UGI tariff provisions are unreasonable. Therefore, the Complaint will be denied and dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of 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. "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).

4. 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, a complainant will prevail. If the utility rebuts Complainant's evidence, the burden of going forward with the evidence shifts back to a 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. *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980); *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

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

6. "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. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

7. 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.

8. A Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers. 66 Pa.C.S. § 1301; *DiSanto v. Dauphin*

Consol. Water Supply Co., 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1967 (Pa. Cmwlt. 1981).

9. Tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlt. 1979), *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Cmwlt. 1996), *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlt. 1997).

10. A Complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1967 (Pa. Cmwlt. 1981).

11. The Complainant failed to prove that UGI violated the Public Utility Code, the Commission's regulations, an outstanding order of the Commission or the company's tariff.

12. The Complainant failed to prove that the applicable UGI tariff provisions are unreasonable.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Donald Roseberry in Donald Roseberry v. UGI Utilities, Inc. - Gas Division at Docket No. C-2023-3044708 is denied and dismissed.

