

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Michael Caltagirone	:	
	:	
v.	:	C-2024-3046167
	:	
UGI Utilities Inc. – Gas Division	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

In this matter, an applicant filed a Formal Complaint against a gas utility seeking the extension of gas service to his home and challenging the estimate or contribution provided to him from the utility that he would need to pay in order to have service extended. This Initial Decision dismisses the Complaint for failure of the applicant to meet his burden of proof.

HISTORY OF THE PROCEEDING

On February 5, 2024, John Michael Caltagirone (“Mr. Caltagirone” or “Complainant”) filed a Formal Complaint against UGI Utilities Inc. – Gas Division (“UGI Gas,” “the Company,” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), alleging that he wanted gas service extended to his home. Complainant alleged that the estimate Respondent provided to him of over \$500,000 to

run gas service to his property was provided without any research into the length or seeing how many homeowners would connect for gas services. The Complaint was served on Respondent on March 11, 2024.

On April 1, 2024, Respondent filed an Answer to the Complaint. Respondent admitted that it provided Complainant with an estimate regarding the cost of running gas service to his property from the nearest gas main. Respondent asserted that the estimate it provided to Complainant in the amount of \$637,608 was based on the average installation costs in similar project areas and the fact that the nearest gas main was approximately 3,000 ft from Complainant's property. Respondent concluded its Answer by requesting that the Commission deny the Complaint.

On April 3, 2024, the Commission issued a Hearing Notice scheduling this matter for an evidentiary hearing on June 5, 2024, and assigning me as Presiding Officer.

On May 13, 2024, the Commission issued my Prehearing Order which set forth the procedural rules that would govern the evidentiary hearing.

On June 5, 2024, the evidentiary hearing was held as scheduled. Complainant appeared *pro se* and testified on his own behalf. Complainant sponsored seven exhibits, all of which were admitted into the record without objection. Attorney Peter Kramer appeared on behalf of Respondent and presented the testimony of one witness who sponsored three exhibits, all of which were admitted into the record without objection.

On July 1, 2024, a 26-page electronic transcript of the evidentiary hearing was filed with the Commission. The evidentiary record closed on this date.

For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. Complainant in this proceeding is John Michael Caltagirone.
2. Respondent in this proceeding is UGI Utilities Inc. – Gas Division.
3. Complainant, along with his two daughters and two grandchildren, live at 178 Hospital Road, Wernersville, PA 19565 (“service address”). Tr. 8.
4. UGI Gas Exhibit No. 3 contains UGI Gas’s Tariff Rule No. 5, titled “Extension Regulation.” UGI Gas Exhibit No 3.
5. UGI’s Tariff Rule No. 5 contains the Company’s extension regulations which lays out the requirements for the extension of service to an applicant who wishes to receive service. Tr. 18; UGI Gas Exhibit No 3.
6. Rule 5.1(a) of the Company’s tariff states that the costs of extending or expanding facilities beyond the Company’s Allowable Investment Amount shall be paid by the Extension Applicant as a contribution. UGI Gas Exhibit No 3, p. 1.
7. Rule 5.1(b)(2) of the Company’s tariff indicates that one of the conditions that must be met in order for an applicant to have the contribution excused is that the service length of the extension project must be 150 feet or less. UGI Gas Exhibit No 3, p. 1.
8. Rule 5.2(c) of the Company’s tariff states in pertinent part that cost estimates used by the Company may be based on construction and installation conditions anticipated for the extension. UGI Gas Exhibit No 3, p. 2.

9. On January 3, 2024, Complainant contacted Respondent to inquire about extending gas service to one to possibly five residential customers. Tr. 15, 16; UGI Gas Exhibit No. 1.

10. Complainant was informed during the January 3, 2024, call with Respondent that he would need to pay a contribution to have gas service extended to his home from this nearest gas main. Tr. 16.

11. The contribution that Respondent requires Complainant to pay to have gas service extended to his home is roughly \$500,000. Tr. 20.

12. Respondent requires Complainant to pay a contribution amount to have gas service extended to his home because the cost of extending its facilities to Complainant was beyond the Company's Allowable Investment Amount. Tr. 16.

13. The nearest UGI Gas main to the service address is located at the intersection of Sportsman Road/Hunsicker Road and Texter Mountain Road. Tr. 17; UGI Gas Exhibit No. 2.

14. The nearest UGI Gas main is approximately 3,000 feet away from the service address. Tr. 17; UGI Gas Exhibit No. 2.

15. The contribution amount was based on the distance from the nearest main to Complainant's home of 3,000 feet and the average installation costs of similar projects in the area. Tr. 16, 17, 20; UGI Gas Exhibit No. 2.

DISCUSSION

Legal Standards

Burden of Proof

Section 332(a) of the Public Utility Code (“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 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

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

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 the 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).

Line Extension

The Commission's regulations state the following with respect to the extension of natural gas service facilities to an applicant:

§ 59.27. Extension of facilities.

Each public utility shall file with the Commission, as part of its tariff, a rule setting forth the conditions under which facilities will be extended to supply service to an applicant within all, or designated portions, of its service area. The utility may, upon proper cause shown, refuse or condition the acceptance of a particular application of extension of facilities.

52 Pa. Code § 59.27.

Analysis

Complainant, along with his two daughters and two grandchildren, live at 178 Hospital Road, Wernersville, PA 19565. Tr. 8. The residence at the service address does not currently have natural gas service. Complainant desires natural gas service at his residence and contacted Respondent in January 2024 to inquire about having gas service extended to his home. Complainant contends that Respondent informed him that

the estimate for gas service to be extended to his home was around \$500,000, based on extending service from the nearest gas main 3,000 feet away. Tr. 7. Complainant challenges this estimate, stating that the estimate should be based on the distance of 1,584 feet from his home to the intersection of Sportsman and Hospital Road that he calculated using Google Maps. Tr. 7, 10; Complainant Exhibit 1-3. Complainant also complained that the estimate does not consider the additional 20 to 30 homes further up on a hill near his home, implying that natural gas service could be extended to those homes as well. Tr. 7, 8. Ultimately, paying around \$500,000 to have gas service extended to his home is not affordable for Complainant. Tr. 8.

Respondent presented the testimony of Michael Ast, a senior technical sales specialist employed by UGI Gas. Tr. 13. Mr. Ast confirmed that he spoke to Complainant in January 2024 to inquire about extending gas service to one to possibly five residential customers. Tr. 15, 16; UGI Gas Exhibit No. 1. Mr. Ast testified that the nearest UGI gas main to Complainant's home is approximately 3,000 feet away at the intersection of Sportsman Road/Hunsicker Road and Texter Mountain Road. Tr. 17; UGI Gas Exhibit No. 2. Mr. Ast testified that he informed Complainant in January 2024 that he would need to pay a contribution of around \$500,000 to have gas service extended to his home from this nearest gas main and maintained that position at the evidentiary hearing. Tr. 16, 20. Regarding why Respondent requires Complainant to pay a contribution amount to have gas service extended to his home, Mr. Ast pointed to the Company's tariff. Specifically, Mr. Ast testified regarding Rule 5 of the Company's tariff, which details the conditions under which UGI Gas facilities will be extended to

supply service to an applicant. Tr. 18-20. Rule 5 was entered into the record as UGI Gas Exhibit No. 3 and, in pertinent part, states the following:

5.1 Obligation to Extend or Expand.

(a) Under the rules set forth below and under normal conditions of construction and installation, upon written application, the Company will extend or expand its facilities within its service territory, provided that (a) the requested extension or expansion will not adversely affect the availability or deliverability of gas supply to existing customers and (b) the Company's investment in facilities is warranted by the Annual Base Revenue to be derived from the extension. The costs of extending or expanding facilities beyond the Company's Allowable Investment Amount shall be paid by the Extension Applicant as a contribution. Extension contributions may be excused, in whole or in part, in accordance with Rule 5.1(b). Upon request, the Company will provide Customers with a written explanation and reasonable detail of the cost-benefit analysis used in clause (b) above including estimated project costs, the Company's maximum allowable investment, and the Company's Annual Base Revenues. In addition, the Company will provide the Customer with a written timetable for the anticipated construction of the upgrade and written notice of completion.

(b) No contribution amount shall be required for an extension of facilities if all of the following conditions, as determined by the Company, are met:

(2) Service length is one hundred fifty (150) feet or less;

UGI Gas Exhibit No. 3, p. 1.

5.2 General

(a) Annual Base Revenue. As used in this Section 5, the Annual Base Revenue is the anticipated annual base rate revenue from the extension or expansion, as determined by the Company, less the cost of fuel included in base rates. Where gas is used as a supplemental source of fuel for peak heating purposes, anticipated base revenues from such use shall be excluded from Annual Base Revenue.

(b) Allowable Investment Amount. The Company's Allowable Investment Amount shall be the Annual Base Revenue divided by a predetermined rate of return.

(c) Estimates and non-standard costs. Cost estimates used by the Company may be based on construction and installation conditions anticipated for the extension, including, but not limited to, the cost of installation and construction: non street surface restoration, such as replacement or repair of sidewalks, driveways, landscaping or sod; street opening and restoration terms and fees; and any other local government fees required for the installation. The Company may determine cost estimates based on average experienced unit costs.

(d) Surface Restoration. The Company will restore the street surface in accordance with applicable local government regulations and provide rough backfilling of the installation trench from the curb to the meter. The Extension Applicant will be required to perform or pay the Company's cost of non-street surface restoration.

(e) Standard conditions of construction in a residential development, commercial park and industrial park include trenching provided by the developer.

UGI Gas Exhibit No. 3, p. 2.

The reason that Respondent required Complainant to pay a contribution pursuant to Rule 5.1(a), Mr. Ast testified, was because the cost of extending its facilities

to Complainant was beyond the Company's Allowable Investment Amount. Tr. 16. Pursuant to Rule 5.1(b)(2), as the length of the extension would be greater than 150 feet at approximately 3,000 feet, Complainant is not eligible to have the contribution amount excused. Tr. 19, 20. Pursuant to Rule 5.2(c), the contribution amount was based on the distance from the nearest main to Complainant's home of 3,000 feet and the average installation costs of similar projects in the area. Tr. 16, 17, 20; UGI Gas Exhibit No. 2. If five homeowners were to be a part of the extension project, then each homeowner would have to pay the contribution amount divided by five. Tr. 19, 20.

After review of the evidentiary record, Complainant has not met his burden of proving that Respondent violated the Code, the Commission's regulations or Order, or its Commission-approved tariff.

As cited, the Commission requires gas utilities such as Respondent to file a tariff with the Commission setting under what conditions it will extend its facilities and provide service. 52 Pa. Code § 59.27. Respondent has complied with this directive in filing Rule 5 of its Tariff.¹ Mr. Ast testified as to why Respondent requires Complainant to pay a contribution amount and how it calculated the roughly \$500,000 contribution amount necessary to be paid by Complainant.

Complainant did not claim that it was improper for Respondent to require him to pay a contribution amount to have gas service extended to his home. Complainant challenged the accuracy of the contribution amount that he was provided by Respondent of roughly \$500,000. Complainant's only actual challenge in this regard was that Respondent should have used a distance of 1,584 feet to calculate the contribution amount, based on the distance from his home to the intersection of Sportsman and Hospital Road. However, the

¹ Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

evidence provided by Respondent in this matter demonstrates that the nearest gas main to Complainant's home is 3,000 feet away, based on the distance from Complainant's home to the intersection of Sportsman Road/Hunsicker Road and Texter Mountain Road. Thus, I find that Complainant failed to establish by a preponderance of the evidence that Respondent miscalculated the contribution amount by basing the calculation on a distance of 3,000 feet from Complainant's home to the nearest UGI gas main.²

Aside from his argument that the distance used to calculate the contribution amount was incorrect, Complainant did not challenge any other part of Respondent's contribution amount calculation, other than to say that Respondent should have considered an additional 20 to 30 homes up the hill near his home, implying that natural gas service could be extended to those homes as well. The more homes that were to be a part of an UGI Gas extension project to Complainant's neighborhood, the less contribution Complainant would have to pay, if any, to UGI Gas.³ However, the record is devoid of evidence regarding the number of homeowners who would be interested in having gas service extended to their homes and the willingness of these homeowners to connect to the service extension and to make the required contribution towards the cost of the extension. If homeowners in addition to Complainant wish to be a part of an UGI Gas extension project to Complainant's neighborhood, then they may reach out to UGI Gas with such a request. As it relates to the extension of gas to Complainant, which is the subject matter of the Complaint, Complainant must pay the contribution amount of roughly \$500,000 as

² It is not clear why Complainant based his distance calculation on the distance from his home to the intersection of Sportsman and Hospital Road. Mr. Ast testified that he did not recall informing Complainant during the January 3, 2024, call that the nearest gas main was located at the intersection of Sportsman and Hospital Road. Tr. 16.

³ Mr. Ast indicated that it would require over 30 homes/applicants to be a part of the extension project for gas service to be extended to the applicants at a reasonable contribution. Tr. 21.

determined by Respondent. Complainant did not produce any evidence that this contribution amount was miscalculated.

Based on the evidence produced, I conclude that Complainant has failed to establish, by a preponderance of the evidence, that the Respondent improperly calculated the amount Complainant must contribute to extend natural gas service to his residence. The Complaint will be dismissed in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. 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 the 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).

4. Each public utility shall file with the Commission, as part of its tariff, a rule setting forth the conditions under which facilities will be extended to supply service to an applicant within all, or designated portions, of its service area. The utility may, upon

proper cause shown, refuse or condition the acceptance of a particular application of extension of facilities. 52 Pa. Code § 59.27.

5. UGI Gas's tariff states that the costs of extending or expanding facilities beyond the Company's Allowable Investment Amount shall be paid by the Extension Applicant as a contribution. *See* Supplement No. 37 to UGI Gas - Pa. P.U.C. No. 7, Fourth Revised Page No. 35.

6. UGI Gas's tariff indicates that one of the conditions that must be met in order for an applicant to have the contribution excused is that the service length of the extension project must be 150 feet or less. *See* Supplement No. 37 to UGI Gas - Pa. P.U.C. No. 7, Fourth Revised Page No. 35.

7. UGI Gas's tariff states in pertinent part that cost estimates used by the Company may be based on construction and installation conditions anticipated for the extension. *See* Supplement No. 14 to UGI Gas - Pa. P.U.C. No. 7, First Revised Page No. 35(a).

8. Complainant has not met his burden of proving that Respondent violated the Code, the Commission's regulations or Order, or its Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed in the matter of John Michael Caltagirone v. UGI Utilities Inc. – Gas Division at Docket Number C-2024-3046167 is dismissed.

2. That the Secretary's Bureau shall mark Docket Number C-2024-3046167 as closed.

Date: September 26, 2024

/s/
Alphonso Arnold III
Administrative Law Judge