

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Kuniegel	:	
	:	
v.	:	C-2024-3052368
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Robert Kuniegel’s Formal Complaint against Pennsylvania-American Water Company because Complainant has not established that Pennsylvania-American Water Company failed to provide safe, adequate or reasonable service in this matter.

HISTORY OF THE PROCEEDING

On December 2, 2024, Robert Kuniegel (Complainant or Mr. Kuniegel) filed a Formal Complaint (Complaint) against Pennsylvania-American Water Company (PAWC, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contended that there were issues with the safety, reliability and reasonableness of his service. Specifically, Mr. Kuniegel complained that

PAWC was responsible for a water valve that broke on his property, and PAWC is responsible for the cost of excavation work that Complainant paid to locate the leak.

On December 23, 2024,¹ the Respondent filed an Answer denying the material allegations of the Complaint.

On January 15, 2025, an Initial Telephonic Hearing Notice was served on the parties scheduling a further telephonic hearing on March 5, 2025, at 10:00 a.m., and the matter was assigned to me. Also on January 15, 2025, a Prehearing Order was served on the parties reminding them of the date and time of the hearing and setting forth various procedures for the hearing.

On February 3, 2025, the Complainant filed a reply to the Respondent's Answer.

The hearing proceeded as scheduled on March 5, 2025. The Complainant participated *pro se* and testified. The Complainant presented four exhibits at the hearing which were admitted into the record. The Respondent appeared and was represented by Michael A. Gruin, Esquire, who presented the testimony of Shane Farrell, Senior Superintendent of Operations. The Respondent offered three exhibits, which were all entered into the record. No objections were made against any exhibits offered by either party.

Following the receipt of the hearing transcript and exhibits on March 25, 2025, the record closed on May 27, 2025, after allowing time for potential settlement to take place.

¹ The Formal Complaint was served on the Respondent by the Secretary's Bureau on December 3, 2024.

FINDINGS OF FACT

1. The Complainant is Robert Kuniegel, who resides at 1079 State Route 502, Spring Brook Township, PA 18444. Tr. 9.
2. The Respondent is Pennsylvania-American Water Company.
3. The Formal Complaint is related to the address at 107 Drakes Lane, Old Forge, PA 18518, which is owned by Mr. Kuniegel (service address). Tr. 10.
4. The service at issue is related to an alleged water valve that the Complainant claims leaked and for which PAWC is responsible. Tr. 10-11.
5. The Complainant hired an excavator to explore the service address. Tr. 13.
6. The Complainant submitted a statement prepared by the excavator, purportedly summarizing his findings. PAWC did not object to the admission of the Statement into the record. Tr. 13-17; Kuniegel Exhibit 1.
7. The Complainant's excavator did not testify or was available for cross-examination at the hearing.
8. Shane Farrell is a Senior Superintendent of Operations for PAWC and has been employed by PAWC for 16 years. Tr. 17, 19.
9. Mr. Farrell oversees the Company's northern distribution system and the crews who respond to routine and emergency main and service repair. Tr. 19.

10. In August 2024, PAWC was contacted to perform an emergency shutoff for the water at the property, as repairs were being done at the service address. Tr. 19-20.

11. On August 6th, 2024, PAWC was called back to the service address, to help Complainant locate a leak on the service pipe outside. Tr. 20.

12. PAWC noted that the Complainant's excavator had its service line exposed near the curb. Tr. 20.

13. While the pipe was exposed, the PAWC crew supervisor directed the crew to replace the plastic pipe with copper tubing and move its curb valve behind the sidewalk outside of the Pennsylvania Department of Transportation's right-of-way, as mandated by the Commonwealth. Tr. 20-22; Kuniegel Exhibit 3.

14. According to the excavator statement, a water leak was located on a portion of the service pipe that is owned by the Complainant. Tr. 23-24; Kuniegel Exhibit 1; PAWC Exhibit 3.

15. The customer/Complainant's portion of the service line begins on the side of the curb valve leading up to the residence. Tr. 24; PAWC Exhibit 3.

16. The customer/Complainant is responsible for any maintenance and repairs of the service pipe on that side of the Company's curb valve. Tr. 24; PAWC Exhibit 3.

17. Mr. Kuniegel claimed that PAWC installed a second valve that was leaking on the customer side of PAWC's curb valve. Tr. 10-11.

18. PAWC has no record of owning or installing a valve on Complainant's service line. Tr. 25; PAWC Exhibits 1, 2.

19. PAWC researched back to 1988, the oldest record it could find, and found no evidence of installing a second curb valve on Complainant's side of the service line. Tr. 25, 27-28; PAWC Exhibit 2.

20. PAWC has never seen a second valve on the customer's side of the service line. Tr. 35-36; PAWC Exhibits 1-2.

21. PAWC has no reason to believe that it had anything to do with installing a second valve on the customer's side of the service line. Tr. 36.

22. PAWC witness Mr. Farrell testified that in his experience, there would be no reason to install a secondary valve on the customer's side of a service line. Tr. 33-34.

23. According to the statement of the excavator hired by the Complainant, the leak on the service line was not in the same place as PAWC's valve. The leak was located on Complainant's side of the service line, closer to the Complainant's house. Tr. 36-38; Kuniegel Exhibit 1.

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, the Complainant has the burden of proof in this matter. 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, 602 (Pa. Cmwlt. 1990). That is, 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. Cmwlt. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlt. 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unempl. Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 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 her 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. Cmwlt. 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. Cmwlt. 2001).

Quality of Service

The Complainant contends that there is an issue with the quality of service provided by PAWC.

The Public Utility Code at Section 1501 requires public utilities to provide service that is reasonable and adequate, not perfect. 66 Pa.C.S. § 1501. The statute provides, in relevant part:

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. Pa. Pub. Util. Comm'n*, 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.

478 A.2d at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed.² *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Mr. Kuniegel testified that PAWC installed a second valve on the service line outside of his home that leaked, and for which PAWC was responsible. Tr. 10-11. Mr. Kuniegel submitted a statement from an excavator that stated that a second, deteriorated valve was located on the service line. *See* Kuniegel Exhibit 1. However, PAWC witness Farrell, who I find to be credible, testified that, based on the location described in the excavator statement, the valve/leak was located on the Complainant’s side of the service line. Tr. 25; Kuniegel Exhibit 1. PAWC also noted that it had no record of installing any valve on Complainant’s side of the service line. Tr. 25, 27-28; PAWC Exhibits 1-2. PAWC located a service record going back to 1988 which confirmed the existence of the current valve that it was aware of on its side of the service line and that it relocated slightly to be outside of PennDOT’s right-of-way. PAWC Exhibit 2.³

Complainant submitted into evidence a picture of a piece of pavement that seemed to be re-paved over, on PAWC’s side of the service line. Kuniegel Exhibit 3. Complainant did not submit a picture of a deteriorated water valve on either side of the service line. Complainant’s excavator did not appear at the hearing to testify or be cross-examined about the excavator statement that was submitted by the Complainant. While

² ““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, or contract carriers by motor vehicle, 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.

³ The record from 1988 also references another record going back to 1959, which also did not indicate that a second valve had been installed by PAWC or that another valve existed for which PAWC was responsible.

PAWC did not object to the submission of the statement, a review of the statement alone does not provide proof that PAWC installed a second valve on Complainant's side of the service line, for which it was responsible for maintaining or repairing. As the excavator was not cross-examined for his statement, I cannot find the statement to be more credible than the witness who testified on behalf of PAWC. However, even if the excavator statement submitted by the Complainant is true, it only proves that any second valve was on the Complainant's side of the service line. Tr. 23-24, 36-38; Kuniegel Exhibit 1. It does not prove any culpability on the part of PAWC.

According to the excavator's statement, a water leak was located on Complainant's side of the service line. Tr. 23-24, 36-38; Kuniegel Exhibit 1; PAWC Exhibit 3. As PAWC's tariff states, the customer is responsible for the maintenance and repair of the service line from the curb to the customer's house. PAWC Exhibit 3. If the second valve exists at all, it has been confirmed by the statement of the Complainant's excavator, and the testimony of PAWC witness Farrell, that the valve was on Mr. Kuniegel's side of the service line. Complainant would therefore be responsible for the maintenance and repair of any leaks on his side of the service line. Complainant has not submitted evidence to prove that PAWC is responsible for the leak on his side of the service line.

Lastly, Mr. Kuniegel seeks damages for his costs for the excavation to locate the water leak. Although I find that Mr. Kuniegel has not met his burden of proof in this case, it is well established that the Commission does not have the authority to order a public utility to pay monetary damages. *See Byer v. Peoples Nat'l Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977) (holding that the Commission does not have the authority to award damages); *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980). Therefore Mr. Kuniegel's request for monetary damages is denied.

Based on the record evidence, I cannot conclude that the Complainant has established that PAWC violated the Public Utility Code, Commission regulation or a Commission order. Therefore, the Complainant has not met his burden of demonstrating that PAWC has failed to provide safe, adequate and reasonable service. Accordingly, his Complaint is denied in its entirety.

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 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. 66 Pa.C.S. § 1501.
5. The Commission does not have the authority to order a public utility to pay monetary damages. *Byer v. Peoples Nat'l Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977) (holding that the Commission does not

have the authority to award damages); *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

6. The Complainant did not meet his burden of proving that PAWC is not providing safe, adequate and reasonable service in this matter. 66 Pa.C.S. §§ 332(a); 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Robert Kuniegel in Robert Kuniegel v. Pennsylvania-American Water Company at Docket No. C-2024-3052368 is denied; and

2. That Docket No. C-2024-3052368 be marked closed.

Date: January 8, 2026

_____/s/
Charece Z. Collins
Administrative Law Judge