**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ralph Marinetti :

:

v. : C-2013-2351719

:

UGI Utilities Inc. – Gas Division :

**INITIAL Decision**

Before

Ember S. Jandebeur

Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On February 21, 2013, Ralph Marinetti (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission against UGI Utilities, Inc. – Gas Division (Respondent or UGI) alleging that he wanted gas service run to his home at little or no cost to himself.

On April 5, 2013, Respondent filed an Answer agreeing that the Complainant had contacted UGI about a line extension and was provided with an estimate of the cost associated with that extension and that the Complainant did not want to pay the associated costs.

By Hearing Notice dated April 8, 2013, the parties were notified that a Telephonic Hearing in this case was scheduled for the morning of May 13, 2013. A Prehearing Order was issued on April 9, 2013, stating the date and time of the scheduled hearing and advising the parties that the case could be dismissed if they failed to obtain a continuance and failed to appear for the hearing. The Prehearing Order also advised the parties of applicable procedural rules.

The hearing convened as scheduled. The Complainant appeared *pro se*, the Respondent was represented by counsel. The Complainant proffered the Formal Complaint as an exhibit; it was accepted into the record. The Respondent proffered no exhibits. The record closed on June 13, 2013.

FINDINGS OF FACT

1. The Complainant is a not a current customer of the Respondent’s but wishes to be.
2. The Complainant resides at 1424 Blair Street, Easton, Pennsylvania. Tr. at 2.
3. The Respondent is a jurisdictional utility providing natural gas service in Pennsylvania.
4. The Complainant wants the Respondent to extend the gas lines to his (Complainant’s) community. Tr. at 8.
5. The Complainant is willing to pay $1,000.00 toward the construction of the gas line. Tr. at 8.
6. Becky Eshbach, manager of regional sales, testified on behalf of the Respondent. Tr. at 10-11.
7. October 6, 2011, was the first time the Complainant contacted the Respondent requesting extension of the gas main. Tr. at 12-13.
8. The Respondent determines whether to extend a gas line based upon several factors, including anticipated base revenues. Tr. at 13.
9. The Respondent also has an allowance for installing at their cost, a meter, a regulator and a main up to four times the anticipated base revenue. An additional allowance supplies the service pipe up to three times the base revenue. Tr. at 13-14.
10. If the cost of the line exceeds the allowance an applicant must pay the additional cost. Tr. at 14.
11. The estimate for the line extension was $16,997. The Complainant would be responsible for $13,559 of the total. Tr. at 14.

DISCUSSION

Burden of Proof:

Section 332(a) of the Public Utility Code, [66 Pa. C.S. § 332(a)](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=3&_butInline=1&_butinfo=66%20PACODE%20332&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=cb17ec69e230c7619c8bcdc9002e288f), provides that the party seeking relief from the Commission has the burden of proof. Complainant seeks relief from the Commission, and, therefore, has the burden of proof in this proceeding.

“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*, 364 Pa. 54, 70 A.2d 854 (1950).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=4&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b364%20Pa.%2054%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=80bd42820a055317af98ca0121ce181a)

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. Pennsylvania Electric Company,* 54 Pa. PUC 528 (1980),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20Pa.%20PUC%20528%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=8e9b44fa2e271a9e231b97bdcfd3251d) and [*Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20Pa.%20PUC%2098%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=1448b9480cd7b69d87fa0b3a68f908ad)

If Respondent submits evidence of “co-equal” weight to refute Complainant’s evidence, Complainant has not satisfied the burden of proof unless it presents additional evidence opposing Respondent’s evidence. [*Morrissey v. PA Dept. of Highways,* 424 Pa. 87, 225 A.2d 895 (1967),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=7&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b424%20Pa.%2087%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=27432e77422dd0ba6521cf4e67013ed4) and [*Burleson v. Pa. P.U.C*., 66 Pa. Commonwealth Ct. 282, 443 A.2d 1373 (1982),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=8&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=4cd0729466bfd1d39c0fd713cc26b525) aff’d. [501 Pa. 443, 461 A.2d 1234.](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=9&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b501%20Pa.%20443%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=28aeeafc2a370113292dc79dfa134b36)

The decision of the Commission must be supported by substantial evidence. See, e.g., Section 704 of the Administrative Agency Law, [2 Pa. C.S. § 704](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=10&_butInline=1&_butinfo=2%20PACODE%20704&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=e7a924bc9a2d8da2187d70ea5b41d8bb). “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 & Western Ry. Co. v. Pa. P.U.C*., 489 Pa. 109, 413 A.2d 1037 (1980);](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=11&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b489%20Pa.%20109%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=71ad7d7d43f91e4c535e8ea71ac62adb) [*Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961);](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=12&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b194%20Pa.%20Super.%20278%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=68dba5dca7025d27a9423554a1c6f72b) and [*Murphy v. Comm., Dept. of Public Welfare, White Haven Center,* 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=13&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b85%20Pa.%20Commw.%2023%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=065374b59b018301e33819591229d308)

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.

Line Extension:

With respect to the extension of natural gas facilities, the Commission has implemented this statutory provision through regulations, which provides as follows:

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 (emphasis added).

The Commission requires NGDCs[[1]](#footnote-1) to have line extension rules in order to protect existing customers from bearing unreasonable costs and to maintain reasonable rates. The competing policy interests of extending service and maintaining reasonable costs are addressed through line extension rules which describe the terms and conditions under which a utility is required to extend service and what level of customer contribution may be required.

Pursuant to Section 59.27, the Commission requires gas utilities to include main extension rules in their tariffs, which set forth the terms and conditions under which service will be extended. 52 Pa. Code § 59.27.

Section 5 of UGI’s tariff provides:

5.1 Supply-Main Construction. The Company will install, own and maintain all gas supply-mains located on

the highway or in right-of-way acquired by the Company and used or usable as part of the Company’s

system.

5.2 Obligation to Extend. Under the rules set forth below and under normal conditions of construction and

installation, upon written application, the Company will extend its facilities within its service territory,

provided that (a) the requested extension 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

anticipated revenue to be derived from the extension. The costs of extending facilities beyond that

provided by the Company shall be paid by the applicant.

5.3 General

(a) Anticipated Base Revenue. As used in these rules, the anticipated base revenue is the annual base rate

revenue from the extension, as determined by the Company using consistently applied, then current

standards, less the cost of fuel included in base rates. Where gas is used as a supplemental

source of fuel for peak heating purposes, base revenues from such use shall be excluded from

anticipated base revenue.

(b). Estimates and Special Costs. Cost estimates used by the Company in analyzing a proposed extension

of facilities will be based on construction and installation conditions anticipated for the particular

extension, standard street opening terms and fees and installation during the construction season.

Notwithstanding the foregoing, applicant may be required to pay for additional costs attributable to

nonstandard street opening terms and fees and estimated additional costs attributable to winter

season installation.

(c). 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. Applicant may be required to perform or pay the Company’s cost of additional surface

restoration, including but not limited to replacement or repair of sidewalks, driveways, landscaping

or sod.

5.4 Residential Gas Service

(a). Meter, Regulator and Service-Supply Pipe. For service to single dwelling units, the Company will

install at its cost the meter, regulator, and service connection (main to curb). The Company will

also install at its expense that length of service-supply pipe (curb to meter) with an estimated

installed cost of up to two times or where the requested service will not require a supply-main

extension three times, the anticipated base revenue, provided that the excess, if any, is paid by the

applicant.

(b). Supply-Mains. For service to single dwelling units, the Company will provide the necessary supply mains,

provided the applicant pays, as an extension deposit, the excess, if any, of the estimated cost

for the minimum system of supply-main needed to serve the proposed extension over an amount

equal to four times the anticipated base revenue.

UGI Utilities, Inc. Gas-Pa PUC No. 5 at pages 16-17.

The provisions of a Commission approved tariff have the force of law and are binding on both the utility and its customer. *Stiteler v. Bell Telephone Co. of Pennsylvania,* 379 A.2d 339 (Pa. Commw. 1977), *Brockway Glass Co. v. PA Public Utility Comm’n*, 437 A.2d 1067 (Pa. Commw. 1981). Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. PA Public Utility Comm’n*, 594 A.2d 816 (Pa. Commw. 1991), *alloc. den*. 605 A.2d 335 (Pa. 1992).

It is clear from Section 59.27, and the tariff that when UGI determines that the cost to extend a gas line exceeds the benefit anticipated to it and its current customers that a customer contribution is required. The customer then must make a choice whether to pursue installation or not. That is exactly the position in which the Complainant finds himself. UGI determined that in order to protect existing customers from bearing unreasonable costs and to maintain reasonable rates it must charge the Complainant a fee. That fee, once calculated, came to $13,559.00, the Complainant stated that he is only willing to pay $1,000.00.

I find no errors in UGI’s position, therefore, the Complainant failed to prove that UGI must accept his $1,000.00 and install a gas line at their cost and this Formal Complaint will be denied and dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this Complaint. 66 Pa. C.S. § 701.
2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. § 332(a).
3. As a matter of general principle, 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 Telephone Company of Pennsylvania*, 72 Pa. Pub. Util. Comm’n 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. Pub. Util. Comm’n 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (1990), *alloc. den.*, 602 A.2d 863 (1992).
4. The Commission requires gas utilities to include main extension rules in their tariffs, which set forth the terms and conditions under which service will be extended. 52 Pa. Code § 59.27.

1. The provisions of a Commission approved tariff have the force of law and are binding on both the utility and its customer. *Stiteler v. Bell Telephone Co. of Pennsylvania,* 379 A.2d 339 (Pa. Commw. 1977), *Brockway Glass Co. v. PA Public Utility Comm’n*, 437 A.2d 1067 (Pa. Commw. 1981).
2. Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. PA Public Utility Comm’n*, 594 A.2d 816 (Pa. Commw. 1991), *alloc. den*. 605 A.2d 335 (Pa. 1992).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Ralph Marinetti at Docket No. C-2013-2351719 is denied and dismissed.
2. That the Secretary’s Bureau shall mark Docket No. C-2013-2351719 closed.

Date: July 2, 2013 /s/

Ember S. Jandebeur

Administrative Law Judge

1. Natural Gas Distribution Company [↑](#footnote-ref-1)