

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of)
Bridgett and Ike Ozuzu against)
Consumers Energy Company.)

Case No. U-20361

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on June 6, 2019.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before June 27, 2019, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before July 11, 2019.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Kandra K.
Robbins

Digitally signed by: Kandra K. Robbins
DN: CN = Kandra K. Robbins email =
robbinsk1@michigan.gov C = US O =
MOAHR OU = MOAHR - PSC
Date: 2019.06.06 10:03:37 -04'00'

June 6, 2019
Lansing, Michigan

Kandra K. Robbins
Administrative Law Judge

* * * * *

Case No. U-20361

An evidentiary hearing was scheduled for April 23, 2019. On March 18, 2019, Michael J. Orris, Assistant Attorney General, filed an appearance on behalf of Commission Staff. On April 12, 2019, Attorneys Theresa A.G. Staley and Ian F. Burgess filed an appearance on behalf of Consumers. Attorney Burgess also filed an Answer to the Amended Complaint of Bridgett and Ike Ozuzu, a Motion for Partial Dismissal For Failure to

State Prima Facie Case/Lack of Jurisdiction and to Require Complainants to Make More Definite and Certain Allegations, and a Motion to Convert Evidentiary Hearing to Prehearing Conference

On April 17, 2019, the evidentiary hearing was convened as scheduled. Complainant appeared on his own behalf. Attorney Matthew Carstens appeared on behalf of MGU. Assistant Attorney General Michael J. Orris appeared on behalf of Commission Staff.

On April 19, 2019 a Ruling Denying Consumers' Motion to Convert Evidentiary Hearing to a Prehearing Conference, denying Consumers' Motion for a More Definite Statement and scheduling April 23, 2019 for Oral Argument on the Motion for Partial Summary Disposition and requiring an answer be filed by Complainants and Staff by April 22, 2019 was entered.

On April 22, 2019, Complainants filed an answer in opposition to the Motion for Partial Summary Judgement. Assistant Attorney General Michael Orris filed an answer on behalf of staff supporting the Motion for Partial Summary Judgement.

On April 23, 2019, Oral Argument on the Motion was heard. Consumers requested that Complainants allegation concerning negligence and seeking an award of damages be dismissed for lack of jurisdiction. Staff agreed that the MPSC lacks statutory authority to award damages. Complainants are requesting \$197,613.22 for damages as a result of the incident. They contend that they are entitled to relief for Consumers negligence.

Based on the arguments presented by the parties, this ALJ found that the MPSC lacks the statutory authority to award damages to a negligence claim and dismissed those portions of the Complaint related to the negligence claims and seeking damages.

At the conclusion of the oral argument, the case proceeded as scheduled.

II.

OVERVIEW OF THE RECORD

The evidentiary record is one transcript of 109 pages and 7 numbered exhibits submitted by Complainant and 11 exhibits submitted by Complainants.

A. Complaint

Mr. and Mrs. Ozuzu's complaint alleged that Consumers Energy was negligent in failing to follow Commission rules. They allege that Consumers Energy's negligent interruption of gas services caused substantial water damage to their property. Complainants contend that they requested gas service at their rental property be transferred from the former tenant's name to their name in July 2016. They contend that the gas service was terminated at some point and in January 2017 a water pipe froze and burst in the rental home.

B. Answer

Consumers Energy contends that the Complainants only requested to have the electricity transferred in July 2016. They began the process of having the gas service transferred but never completed the process. The gas service was not requested to be turned on until January 2017.

Consumers contends that on June 11, 2016, the gas service was shut off for non-payment by a tenant at the property owned by Complainants. Gas service was then reconnected on January 23, 2017 when Complainants established the gas service.

C. Evidentiary Hearing

At the hearing, Ms. Ozuzu testified that she and her husband own property located at [REDACTED], Michigan. She testified that on July 5, 2016, she contacted Consumers Energy to transfer the electrical and gas services from the tenant's name back into her husband's name.¹

She testified at the time she was required to provide proof of ownership of the home and contact information. She stated that they were in the home at the time and the electricity was turned on. She does not know if the gas was turned on as it was summer and there was no need to try the gas.² She testified that they were told the utilities were turned on.

She testified that she requested itemized statements from Consumers Energy. She testified that the itemized statements show that there was no gas usage from July 5, 2016 until January 2017.³ She testified that she received monthly billings which showed no gas usage. She testified that there was no reason to turn the gas on because it was warm and there was no tenant at the home. There was no reason to turn on the heat or to cook.⁴

¹ Tr. pgs. 29-30

² Tr. pg. 31

³ Tr. pgs. 73-75/ Exhibit C-1

⁴ Tr. pgs. 75-76

Ms. Ozuzu testified that their son would check on the property and they had contracted with a handy man.⁵ Ms. Ozuzu testified that the handy man turned the furnace on in January. She believes that it was January 5, 2017 that he turned on the furnace.⁶ Ms. Ozuzu testified that her son had turned on the furnace but that the handy man was just there to ensure that everything was alright.⁷

Ms. Ozuzu testified that they contacted the MPSC regarding their complaint. They received a response from Stephanie Haney.⁸

Craig Bosker testified that he works for Trident properties and was contracted to keep the Ozuzu's property maintained.⁹ He was unclear on the timeframe in which he provided these services. He initially testified that it was in 2015 but after prompting by Ms. Ozuzu testified that it might have been 2016 or 2017.¹⁰

He testified that he went and turned the furnace on January 6. He testified that about a week later Mr. Ozuzu called and told him that a pipe had burst.

Mr. Bosker testified that when he turned the furnace on there was air moving but it was not warm heat from the furnace not being lit. He testified that there was no heat coming from the furnace.¹¹

Mr. Jason Bailey testified that he is the owner / technician with BailTex Carpet Cleaning and Water Damage. He was contacted by the Ozuzus regarding a flooded house.¹²

⁵ Tr. pg. 76

⁶ Tr. pg. 77

⁷ Tr. pg. 79

⁸ Tr. pg. 46 / Exhibit C-8

⁹ Tr. pgs. 87-88

¹⁰ Tr. pgs. 89-90

¹¹ Tr. pg. 94

U-20361

Page 5

Mr. Bailey testified that when he arrived at the property, he noted that there was no gas service. The gas was turned off to the house. The shutoff valve was turned and there was a padlock through it.¹³

Ms. Ozuzu rested her case at this time. Consumers Energy made an oral motion requesting a directed verdict indicating that the Complainants failed to produce any evidence of a violation of any rule. At the time, this ALJ granted the motion.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

The following findings of fact are based on the preponderance of the evidence in the evidentiary record.

Mr. and Mrs. Ozuzu own property located at [REDACTED], Michigan. This is a rental property.

In July 2016, the utility services to the home were shut-off as a result of non-payment by the tenant at the time.

Mr. and Mrs. Ozuzu contacted Consumers Energy requesting to have the utilities transferred to their name. Consumers Energy requested documentation before opening the account.

On July 5, 2016, the electrical services were turned on. This was verified by Ms. Ozuzu.

¹² Tr. pg. 97

¹³ Tr. pg. 100

However, there is nothing in the record to indicate that the gas services were turned on.

Mr. and Mrs. Ozuzu were clearly aware that there was no gas being used between July 5, 2016 through December 2016 as indicated by the billing statements. Clearly, there was no gas service during any of this time.

There was no gas usage from June 2016 until the gas was turned on after January 24, 2017.

The record shows that the gas service was turned off in June 2016 and the meter remained locked until January 2017.

Conclusions of Law

The burden of proof in complaint cases is assigned in R 792.10446 which provides:

Rule 446. The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed or may shift, as provided by law or as may be appropriate under the circumstances.

The Complaint does not specifically allege any particular rule or standard violated by Consumers Energy beyond alleging negligence. While a water pipe clearly froze and burst causing damage to the Ozuzu's home, there has been no evidence presented that the Ozuzu's had turned on the gas service.

The record indicates that the meter was shut off in June 2016 and appears to have remained shut off until January 2017. The meter was still shut off when Mr. Bailey arrived at the home as he observed the meter shut off and locked by the utility.

It is unclear from the record as to why there was no service. Exhibit C-8 indicates a timeline showing that Consumers attempted to contact the Ozuzu's by both phone and letter on July 11, 2016 to indicate that the proper documentation had been received and the gas would be turned on as soon as the Ozuzu's called.

There is nothing in the record to indicate that Mr. or Mrs. Ozuzu contacted Consumers Energy after July 11, 2016 until after January 24, 2017 requesting that the gas service be instituted.

Complainants have failed to establish that Consumers Energy violated any provision of the Commission's Consumer Standards and Billing Practices for Residential and Non-Residential Customers. For these reasons, Consumers Motion for a Directed Verdict was granted.

IV. CONCLUSION

For the reasons set forth above, the undersigned proposed that the Commission adopt the above proposed findings of fact and conclusions of law.

Any arguments not specifically addressed in this Proposal for Decision are deemed irrelevant to the finding and conclusions recited above.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

**Kandra K.
Robbins**

Digitally signed by: Kandra K. Robbins
DN: CN = Kandra K. Robbins email =
robbinsk1@michigan.gov C = US O =
MOAHR OU = MOAHR - PSC
Date: 2019.06.06 10:03:54 -04'00'

Kandra Robbins
Administrative Law Judge

June 6, 2019
Lansing, Michigan
U-20361
Page 8