

UGI Energy Services, Inc.

June 16, 2010

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17120-3265

Re: Digital 833 Chestnut, LLC v. PECO Energy Company, Philadelphia Gas Works and UGI Energy Services, Inc., Docket Nos. C-2008-2076235, C-2008-2076610 and C-2008-2076623

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter is the Prehearing Conference Memorandum of UGI Energy Services, Inc. The e-filing receipt is attached to the paper copy. Copies of this document are being served per the attached certificate of service. Should you have any questions concerning this filing, please contact me at (610) 992-3750.

Respectfully submitted,

Melanie J. Tambolas
Associate Counsel
UGI Corporation

Counsel for UGI Energy Services, Inc.

Enclosure

cc: The Honorable Herbert Smolen (w/enclosure) (via Federal Express)
Certificate of Service (w/enclosure) (via E-mail and First-class mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIGITAL 833 CHESTNUT, LLC	:	
	:	
V.	:	DOCKET NO. C-2008-2076623
	:	
PECO ENERGY COMPANY	:	
PHILADELPHIA GAS WORKS AND	:	
UGI ENERGY SERVICES, INC.	:	

**PREHEARING CONFERENCE MEMORANDUM ON REMAND
OF UGI ENERGY SERVICES, INC.**

BEFORE ADMINISTRATIVE LAW JUDGE HERBERT SMOLEN:

I. BACKGROUND

On November 19, 2008, Digital 833 Chestnut, LLC (“Complainant”) filed a formal complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company, Philadelphia Gas Works and UGI Energy Services, Inc. (“UGIES”), seeking an order from the Commission that, with respect to UGIES: (1) relieves Complainant from its contractual obligation to pay UGIES for gas delivered by UGIES to Complainant in the amount of payments that Complainant’s authorized agent for the receipt and payment of UGIES’ invoices, Celeren Corporation (“Celeren”), failed to remit to UGIES on Complainant’s behalf; and (2) to the extent Complainant paid UGIES for such gas delivered by UGIES, requires UGIES to refund amounts paid by Complainant to UGIES in the amount of payments that Celeren failed to remit to UGIES on Complainant’s behalf. The Commission’s Secretary Bureau assigned three different docket numbers to the Complaint and docketed the Complaint against UGIES at C-2008-2076623.

UGIES filed an Answer to the Complaint on December 18, 2008 and, subsequently, on May 26, 2009, filed a Motion to Dismiss the Complaint (“Motion”). On June 15, 2009, Complainant filed an Answer to UGIES’ Motion, requesting that it be denied. On July 17, 2009, presiding Administrative Law Judge (“ALJ”) Guy M. Koster issued an Initial Decision granting UGIES’s Motion and dismissed the Complaint with prejudice. On August 6, 2009, Complainant filed Exceptions to the Initial Decision of ALJ Koster and UGIES filed Reply Exceptions on August 17, 2009.

By Opinion and Order adopted at Public Meeting on March 25, 2010 (“Remand Order”), the Commission granted the Exceptions filed by Complainant and, in doing so, reversed the Initial Decision of ALJ Koster and remanded the matter to the Office of ALJ for further proceedings. On May 7, 2010, a Notice was issued informing the parties that a Prehearing Conference on Remand is scheduled for Wednesday, June 23, 2010, before the Honorable Herbert Smolen. On May 25, 2010, ALJ Smolen issued a Prehearing Conference Order on Remand requiring the parties to file and serve, on or before June 16, 2010, Prehearing Conference Memoranda that address the issues set forth below.

II. SERVICE

The following attorney should be identified on the service list for UGIES in this proceeding:

Melanie J. Tambolas
Associate Counsel
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
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Fax. (610) 992-3258
tambolasm@ugicorp.com

UGIES will agree to accept service by electronic mail only and proposes that all parties to the proceeding accept service in such manner.

III. CONSOLIDATION

UGIES has no objection to these proceedings moving to hearing and decision on either a consolidated or trifurcated basis.

IV. SCHEDULE

UGIES proposes that the procedural schedule set forth below be adopted for this proceeding:

Prehearing Conference	Wednesday, June 23, 2010
Parties' Direct Testimony	Friday, July 23, 2010
Parties' Rebuttal Testimony	Friday, August 20, 2010
Parties' Surrebuttal Testimony	Friday, September 17, 2010
Hearing	Thursday, October 7, 2010 – Friday, October 8, 2010
Main Briefs	Friday, November 5, 2010
Reply Briefs	Friday, December 3, 2010

V. DISCOVERY

UGIES received interrogatories from Complainant on May 6, 2009. UGIES has deferred responding to these interrogatories pending the disposition of the proceeding. Since the issuance of the Commission's Remand Order, counsel for UGIES has been in communication with counsel for Complainant indicating that UGIES will provide responses and objections to the interrogatories before the Prehearing Conference on June 23, 2010. In addition, UGIES intends to propound its own discovery requests to Complainant.

UGIES is not aware of any proposed schedules or orders with respect to discovery and reserves the right to raise any objections to such proposals. UGIES also reserves the right to raise such objections as may be appropriate to any discovery requests it receives in the future.

VI. WITNESSES

In accordance with 52 Pa. Code § 5.412, UGIES plans to submit written testimony of the following witnesses and will make such witnesses available for cross-examination at hearing as appropriate:

Mr. Cedric Haywood
UGI Energy Services, Inc.
One Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610
(610) 373-7999

Mr. Haywood is Director of Credit for UGIES, who will testify concerning UGIES' credit and collection practices and Complainant's billing and payment history and will provide evidentiary foundation for the admission for certain UGIES business records.

Michael A. Amabile
Industrial Energy Inc. (Total Supply and Management)
125 Strafford Avenue, Suite 300
Wayne Pa. 19087
Phone: (610) 975-4528

Mr. Amabile is an independent contractor that serves as a consultant and sales agent for UGIES, who will testify concerning the formation of the contract between UGIES and Complainant and personal communications he had with Complainant.

UGIES reserves the right to substitute witnesses with requisite personal knowledge and technical expertise and to call such additional witnesses as may be required to respond to issues raised by other parties.

VII. ISSUES

Based on the Commission's Remand Order, UGIES believes that the following issues and sub-issues will be addressed in this proceeding:

1. Whether Complainant authorized Celeren to serve as Complainant's agent for receipt and payment of billing invoices from UGIES.
 - a) Whether UGIES knew that Celeren acted as Complainant's authorized agent for receipt and payment of billing invoices. *See Remand Order* at 6.
 - b) Whether Complainant was obligated to make known to UGIES the fact that Celeren was Complainant's authorized agent for receipt and payment of billing invoices from UGIES. *See Id.*
2. Whether UGIES, as a NGS, owed a duty pursuant to the Public Utility Code, the Commission's regulations and/or Commission precedent, to notify Complainant, a large commercial customer, that Complainant's authorized agent for receipt and payment of billing invoices was delinquent in payment of invoices. *See Id.*
 - a) The basis for such duty under the Public Utility Code, the Commission's regulations and/or Commission precedent.
3. If such duty existed, whether UGIES acted reasonably in meeting its duty to notify Complainant that Complainant's authorized agent for receipt and payment of billing invoices was delinquent in payment of such invoices.
4. If such duty existed and UGIES failed to meet this duty, whether Complainant is entitled to the relief sought.

- a) The basis for the Commission's authority under the Public Utility Code, the Commission's regulations and Commission precedent to relieve a customer from its contractual obligation to pay amounts owed to a NGS for gas delivered by such NGS to the customer pursuant to the terms and conditions of a contract between the NGS and the customer.
- b) The basis for the Commission's authority under the Public Utility Code, the Commission's regulations and Commission precedent to order a refund of amounts paid by a customer to a NGS for gas delivered by the NGS to the customer pursuant to the terms and conditions of a contract between the NGS and the customer.

Additional issues or sub-issues may develop as UGIES conducts additional discovery in this case or upon review of other parties' testimony and reserves the right to address these issues or sub-issues as they arise.

VIII. EVIDENCE

In this proceeding, UGIES intends to offer into evidence the following:

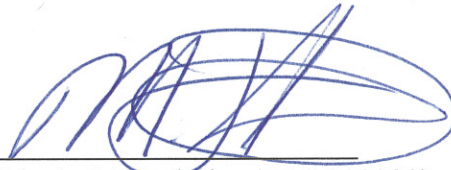
1. Testimonial and documentary evidence that a valid and enforceable contract existed between UGIES and Complainant, and the terms and conditions of such contract.
2. Testimonial and documentary evidence that Complainant expressly designated Celeren to UGIES as Complainant's authorized agent for receipt and payment of billing invoices from UGIES.

3. Testimonial and documentary evidence demonstrating UGIES' performance under the contract with Complainant, amounts invoiced and payments made by Complainant and/or Complainant's agent.
4. Testimonial and documentary evidence that UGIES kept Complainant apprised of invoice amounts and payments by Celeren beginning in 2006 and throughout the term of the contract, and that Complainant directed UGIES to collect amounts owed through Celeren.
5. Testimonial and documentary evidence that UGIES is contractually entitled to payment by Complainant for all gas commodity sold and delivered by UGIES between June 2006 and May 2008.

UGIES reserves the right to offer additional evidence in this proceeding in response to issues uncovered during discovery or in response to issues raised by other parties in this proceeding.

WHEREFORE, UGIES respectfully requests that the ALJ issue an Order establishing the procedural matters and schedule as set forth in this Prehearing Conference Memorandum.

Respectfully submitted,



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E-mail: tambolasm@ugicorp.com

Counsel for UGI Energy Services, Inc.

Dated: June 16, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIGITAL 833 CHESTNUT, LLC :
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 : **DOCKET NO. C-2008-2076623**
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 V. :
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 PECO ENERGY COMPANY :
 PHILADELPHIA GAS WORKS AND :
 UGI ENERGY SERVICES, INC. :

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of June 2010, I have served a true and correct copy of the foregoing document in the manner and upon the persons listed below in accordance with requirements of 52 Pa. Code §1.54 (relating to service by a participant):

VIA OVERNIGHT DELIVERY:

The Honorable Herbert Smolen
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street
Suite 4063
Philadelphia, PA 19107

VIA E-MAIL AND FIRST-CLASS MAIL:

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Melanie J. Tambolas

Dated: June 16, 2010