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Electronically Filed

October 19, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: UGI Kenneth Nein v. UGI Utilities, Inc.; Docket No. C-2011-2235675; MOTION
FOR JUDGEMENT ON THE PLEADINGS**

Dear Secretary Chiavetta:

Please find enclosed for filing in the above-captioned proceeding the Motion for Judgment on the Pleadings and Notice to Plead on behalf of UGI Utilities, Inc. – Gas Division. Should you have any questions concerning this filing, please feel free to contact me.

Sincerely yours,


Larry R. Crayne

Counsel for UGI Utilities, Inc. – Gas Division

Enclosure

cc: The Honorable Dennis J. Buckley
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Melanie J. Elatich (via e-mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of:

Kenneth Nein,
Complainant,

Complaint Docket
No. C-2011-2235675

VS.

UGI Utilities, Inc.,
Respondent.

MOTION FOR JUDGMENT ON THE PLEADINGS

AND NOW comes Respondent, UGI Utilities, Inc. (UGI), pursuant to *52 Pa. Code*, Section 5.102 (a) and (c), and files the following Motion for Judgment on the Pleadings:

1. Complainant in this proceeding demands that UGI return: "...all money they charged me in regard to the **Migration Rider Surcharge**." Complainant also protests that he did not receive adequate notice from UGI and the Commission of the obligation to pay the UGI Migration Rider after the choice of an alternative gas supplier.

2. The basis for this complaint is that under the applicable UGI Tariff, Supplement No. 84 to Gas – Pa.P.U.C. No. 5 Migration Rider, Tariff Rule 13.5, Complainant having chosen an alternative gas supplier is required to pay for a period of one year the separately stated over or under collections related to UGI gas supply costs.

3. Rule 13.5 of the UGI tariff provides in relevant part: "Migration Rider. This Migration Rider provides for a method under Section 1307 (f) of the Public Utility Code for the recovery of the experienced net under / over collection of purchased gas costs from ratepayers who shifted from PGC(1) or PGC(2) retail service to Delivery Service or service under Rates RT, NT and CT on or after December 1, 1998."

4. The duly filed and approved Migration Rider is set forth in Thirty-Second Revised Page No. 29 of the UGI Tariff Supplement No. 84 to Gas – Pa.P.U.C. No.5. For Rate R customers, the current Rate PGC-1 Gas Cost Adjustment surcharge is \$0.9400per Mcf.

5. For customers who do not choose an alternative gas supplier, the over or under collection related to UGI gas supply costs are embedded in the distribution charge of gas supply customers' monthly bills and paid as a part thereof.

6. Consequently, Complainant is paying no more or no less than customers who do not choose an alternative gas supplier. The only difference is that the over or under collections related to gas supply costs is separately shown on the bills of customers who choose an alternative supplier. Therefore, Complainant is realizing the full measure of savings by reason of choosing an alternative supplier because he is not paying the over or under collections related to gas supply costs in his UGI bills for distribution service.

7. The validity of the UGI Migration Rider has recently been ruled on by the Commission in the case of *Kelly M. Hatt v UGI Utilities, Inc.*, at Docket No. C-2010-2154880, Initial Decision of ALJ Susan Colwell, affirmed by Final Order of the Commission entered August 2, 2010. ALJ Colwell concluded on page 7 of her Initial Decision: “Both customers pay the MRS. If Complainant had not migrated to an NGS, his bill would include the same MRS as a customer who did migrate, but it would not be listed as a separate charge. A migrating customer pays the MRS for one year, after which he would have completed payment in full for the gas used while he was a UGI PGC rate customer, and the MRS amount would not be included in the billing.”

8. Tariffs have the force of law on both the utility and its customers. *Brockway Glass Company v. Pa. P.U.C.*, 63 Pa. Commonwealth Ct. 238, 437 A.2d 1067 (1981); *Behrend v. Bell*


Tel. Co., 242 Pa. Super. 47, 363 A2d 1152 (1976). Thus, both the utility and the Complainant are bound by all terms and provisions of the tariff.

9. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S., Section 703 (b); 52 Pa. Code, Section 5.21 (d). Dismissing a complaint is appropriate and in the public interest when there are no genuine questions of material fact and the respondent is entitled to judgment as a matter of law. *Lehigh Valley Power Comm. v. Pa. P.U.C.*, 563 A.2d 548 (Pa. Commonwealth Ct. 1989); *Edan Transportation Corp. v. Pa., P.U.C.*, 623 A.2d 6 (Pa. Commonwealth Ct. 1993). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. Public Utility Comm.*, 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (2003).

10. Complainant's demands are legally insufficient. Complainant alleges no violation of any Statute, regulation or order which UGI has violated. Complaint merely asserts that he believes he was not adequately advised by UGI and the Commission of the requirements of UGI Tariff Rule 13.5 Migration Rider. The complaint is insufficient as to substance in that UGI Tariff Migration Rider Tariff Rule 13.5 has been filed and approved by the Commission. A hearing would be a fruitless exercise and a waste of UGI and Commission resources.

WHEREFORE, UGI moves that this Complaint be summarily dismissed as legally insufficient without the need to incur the time and expense of a formal hearing, the validity of the UGI Migration Rider for customers choosing an alternative gas supplier having been previously considered and ruled on by the Commission as being consistent with the duly filed and approved UGI Tariff and resulting in no detriment to Complainant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry R. Crayne", with a long horizontal flourish extending to the right.

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Date: October 19, 2011

Attorneys for UGI Utilities, Inc. – Gas Division

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of:

Kenneth Nein,
Complainant,

Complaint Docket
No. C-2011-2235675

VS.

UGI Utilities, Inc.,
Respondent.

NOTICE TO PLEAD

To: Kenneth Nein:

You are hereby notified to file a written response to the above Motion for Judgment on the Pleadings within ten (20) days from service hereof or a judgment may be entered against you.

The response must be mailed to Administrative Law Judge Dennis Buckley:

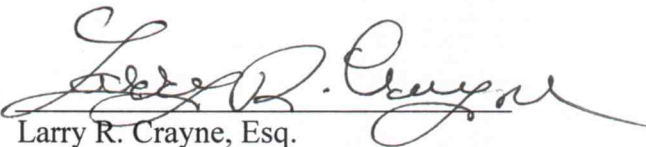
The Honorable Dennis J. Buckley
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
dbuckley@pa.gov

A copy of your response must also be mailed to the undersigned at the following address:

Larry R. Crayne, Esq.
238 Johnston Road
Pittsburgh, PA 15241

Respectfully submitted,

UGI Utilities, Inc. – Gas Division

By: 
Larry R. Crayne, Esq.

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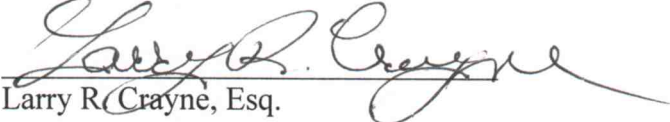
UGI Utilities, Inc.,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 19th day of October, 2011, served a true and correct copy of the foregoing Motion for Judgment on the Pleadings and Notice to Plead 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):

The Honorable Dennis J. Buckley
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265
dbuckley@pa.gov

Kenneth E. Nein
203 Opal Avenue
Reading, PA 19606


Larry R. Crayne, Esq.