

LARRY R. CRAYNE, PC
Attorney at Law

238 Johnston Road
Pittsburgh, PA 15241

lrcrayne@comcast.net

(412) 831-5462
(412) 425-4029

ELECTRONICALLY FILED

August 16, 2012

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

Re: Kenneth Nein v. UGI Utilities, Inc.
Complaint Docket No. C-2012-2298099

Dear Ms. Chiavetta:

Enclosed is an electronically filed copy of UGI Utilities, Inc.'s Motion for Judgment on the Pleadings. A copy of the document has been served on the Complainant.

Sincerely,


Larry R. Crayne

cc: Administrative Law Judge David A. Salapa
P.O. Box 3265
Harrisburg, PA 17105

Kenneth Nein
203 Opal Avenue
Reading, PA 19606

Melanie J. Elatieh (via email)

**Before the
Pennsylvania Public Utility Commission**

In the Matter of:

Kenneth Nein,
Complainant,

Complaint Docket
No. C-2012-2298099

VS.

UGI Utilities, Inc.,
Respondent.

Motion for Judgment on the Pleadings

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

1. For the reasons set forth below, UGI asserts that there is no genuine issue as to a material fact in this complaint proceeding and therefore respectfully requests that Your Honor rule as a matter of law in favor of Respondent.

2. 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. 52 Pa. Code § 5.102(c); *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).

3. 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 § 5.21 (d). 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).

4. On April 11, 2012, UGI was served with Complainant's formal complaint in the instant docket. On May 1, 2012, UGI filed its Answer to the Complaint. To no avail, UGI and Complainant subsequently engaged in a series of discussions and UGI has provided to Complainant a considerable amount of information regarding the operation of the Migration Rider in an effort to explain the Migration Rider to Complainant and thus satisfy this Complaint. On July 27, 2012, UGI was served with an Amended Complaint, and on the same date of filing this Motion, UGI filed its Answer to the Amended Complaint.

5. This complaint is the second complaint filed by Complainant regarding UGI's Migration Rider. The original complaint, *Kenneth Nein v UGI Utilities* at Docket No. C-2011-2235675, was filed on or about March 31, 2011. The complaint was dismissed for legal insufficiency by Initial Decision of Administrative Law Judge Dennis J. Buckley dated December 12, 2011, affirmed by Final Order of the Commission entered January 27, 2012.

6. There is no substantive difference between this Complaint and the original complaint at Docket No. C-2011-2235675. It appears that Complainant remains unconvinced of the legal validity of the Migration Rider and of the impact of recent Commission amendments to the choice regulation that requires the purchase gas cost over and under collections to now be reflected in the price to compare. There is nothing presented, however, on the face of the Complaint or Amended Complaint that suggests that UGI has violated the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa. C.S. § 701.

7. UGI, being a natural gas distribution company ("NGDC"), is the Supplier of Last Resort ("SOLR") that must stand ready to serve all shopping and non-shopping residential and small commercial/industrial natural gas customers within its service territory. See 66 Pa. C.S. § 2207. UGI, being a NGDC with gross intrastate annual operating revenues in excess of

\$40,000,000, is subject to the provisions of Section 1307(f) of the Public Utility Code, 66 Pa.C.S. §1307(f), and the Pennsylvania Public Utility Commission's ("Commission") gas cost recovery regulations at 52 Pa. Code §§53.61 - 53.68, pertaining to the Company's recovery of annual purchase gas costs ("PGC"). See **Exhibit A**, Answers to Interrogatories Dated May 17, 2012, Set I, Nein I-2.

8. Section 1307(f)(5) of the Public Utility Code provides that a NGDC's PGC rate is subject to adjustment based on the over- or under-collections, with interest, of the purchased gas costs incurred for providing natural gas supply service to its customers compared to the natural gas revenues collected over a historical period. Under this provision, a NGDC may recover from its customers over an annual period any variation between purchased gas costs incurred and PGC revenues collected during a prior annual period. This adjustment is commonly referred to as the "e-factor." See **Exhibit A**, Answers to Interrogatories Dated May 17, 2012, Set I, Nein I-2.

9. When a PGC customer switches to an alternate supplier it may still "owe" the PGC for under-collections incurred while the customer was receiving PGC service, or may be "owed" amounts resulting from excess amounts it paid while receiving PGC service. Section 1307(f)(6) of the Public Utility Code expressly requires NGDCs to establish migration riders to collect from or refund to shopping customers, as the case may be, the amount of the under- or over-collection for an appropriate period following the customer's switch to an alternative supplier. See **Exhibit A**, Answers to Interrogatories Dated May 17, 2012, Set I, Nein I-2. In particular, Section 1307(f)(6) provides as follows:

The [C]ommission shall require the customers transferring from sales to transportation service be subject to the over-or-under collection adjustment provided for in paragraph (5) and shall require further that customers transferring from transportation service to sales service not be subject to the over-or-under collection adjustment *for an appropriate period* following either such transfer.

66 Pa. C.S. § 1307(f)(6) (emphasis added).

10. In accordance with Section 1307(f)(6), Section 13.5 of the Company's currently effective, Commission-approved Tariff –Gas – Pa. P.U.C. No. 5 contains a Migration Rider that refunds or collects over- or under-collections over a twelve-month period for customers switching to alternate suppliers. See **Exhibit A**, Answers to Interrogatories Dated May 17, 2012, Set I, Nein I-2. In particular, 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 Customers 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...The recovery period for the experienced net over/(under) collection of purchased gas costs from a Customer to whom this rider applies will be one year from the date on which a Customer last shifted from retail service to delivery service...

UGI Utilities, Inc. Gas Tariff, Supplement No. 94 to Gas – Pa.P.U.C. No. 5, Twenty-Sixth Revised Page 34, Rule 13.5.

11. The Company's Migration Rider has been considered and approved by the Commission in UGI's 1998 PGC proceeding, in the Company's restructuring proceeding, and in two prior formal complaints, including the Complainant's previous formal complaint. See *Pa. Publ. Util. Comm'n v. UGI Utilities, Inc. – Gas Division*, R-00984352 (Order entered October 16, 1998); *Pa. Publ. Util. Comm'n v. UGI Utilities, Inc. – Gas Division, Application of UGI Utilities, Inc. – Gas Division for Approval of Natural Gas Choice and Competition Restructuring Filing*, R-00994786 (Order entered June 29, 2000); *Kelly M. Hatt v UGI Utilities, Inc.*, C-2010-2154880 (Order entered July 29, 2010); *Kenneth Nein v UGI Utilities, Inc.*, C-2011-2235675 (Order entered January 27, 2012).

12. 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.

13. The basis for this Complaint is as follows: (1) that the Migration Rider is not reflected in the Company's Price to Compare; (2) that the Migration Rider is embedded on the distribution side of existing natural gas customers bills; (3) the customers who discontinue their natural gas service are not required to pay the Migration Rider Surcharge; and (4) that new customers are required to pay the Migration Rider for gas they did not consume.

14. On June 23, 2011, the Commission entered its *Revised Final Rulemaking Order* at Docket No. L-2008-2069114 requiring NGDCs to, among other things, include the e-factor in the NGDCs' Price to Compare. In accordance with the June 23, 2011 Order, and in accordance with the Commission's Secretarial Letter issued on May 25, 2012 in the same proceeding, UGI submitted a filing on July 13, 2012 proposing to unbundle natural gas procurement costs from distribution rates and to recover these costs through a gas procurement charge that will be included in its Price to Compare. In this filing, UGI proposed to include the e-factor in the Company's Price to Compare. The June 23, 2011 Order and the July 13, 2012 filing have both been provided to the Complainant as part of the Company's supplemental answers to interrogatories. Complainant's demand in Paragraph 5(1) that the Migration Rider charge be included in the price to compare is now moot by reason of the new Commission regulations at Docket No. L-2008-2069114, *52 Pa. Code*, Chapter 62.

15. It should also be noted that the July 13, 2012 filing requests approval for adding language to UGI's tariff explaining and clarifying the Price to Compare by identifying the various components in the calculation of the Price to Compare. These changes will support

customer awareness and understanding of the Price to Compare and relevant components for cost comparison purposes.

16. 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. . Consequently, Complainant is paying no more or no less for the over or under collections related to gas supply costs 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, if any, 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.

17. The validity of the UGI Migration Rider was recently 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."

18. New customers on the UGI system, starting on their first bill, are subject to gas costs adjustment based on the over- or under-collections, with interest, of the purchased gas costs incurred by UGI for providing natural gas supply service to its customers compared to the natural gas revenues collected over a historical period. Nothing in the Public Utility Code, the

Commission's regulations or orders requires that new customers not be made subject to this e-factor adjustment. Similarly, customers who discontinue natural gas distribution system are only liable to pay for the gas consumed (and related charges) through and until the transfer of the account or the meter shutoff. Nothing in the Public Utility Code, the Commission's regulations or orders require or permit an NGDC to charge or refund to such customers on their final bill the remaining amounts owed or due relating to the over/under collections of UGI gas supply costs for the prior year. *See* UGI's Answer to Amended Complaint.

19. Complainant's demands for relief are, therefore, legally insufficient. Complainant alleges no violation of any statute, regulation or order which UGI has violated. As stated above, Complainant's demand in Paragraph 5(1) that the Migration Rider charge be included in the price to compare is now moot by reason of the new Commission regulations at Docket No. L-2008-2069114, 52 *Pa. Code*, Chapter 62. Paragraph 5 (2) is a demand that information about the Migration Rider be provided on literature and web sites. UGI's efforts to provide such information have been reviewed by the Commission and have been fully explained to Complainant. The Company's July 13, 2012 filing requests approval for adding language to UGI's tariff explaining and clarifying the PTC by identifying the various components in the calculation of the PTC. These changes will support customer awareness and understanding of the PTC and relevant components for cost comparison purposes. Paragraphs (3) and (4) are inconsistent with existing Commission regulations for information required to be included on customers' bills, would be extremely burdensome to provide and, in any event, the information can be obtained from existing Commission filings that are readily available on the Commission's website. Amended Paragraph (5) requests that new customers be treated differently than existing customers. The request is inconsistent with the regulatory structure established under Section


1307(6) of the Public Utility Code and subsequently approved by the Commission in the Orders cited above.

20. For the aforementioned reasons, UGI asserts that this Complaint has presented no question of material fact and, therefore, UGI is entitled to judgment as a matter of law. Consequently, a hearing in this matter would be a fruitless exercise and would not further the interests of judicial economy of this Commission.

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,

UGI Utilities, Inc.

By: 
Larry R. Crayne, Esq. (ID. #9996)
Attorney at Law
238 Johnston Road
Pittsburgh, PA 15241

Melanie J. Elatieh (ID. # 209323)
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Phone: 610-337-1000
Fax: 610-992-3258
E-mail: elatiehm@ugicorp.com

Counsel for UGI Utilities, Inc.

Date: August 16, 2012

UGI Utilities, Inc.
Docket No. C-2012-2298099

Answers to Interrogatories Dated May 17, 2012

Set I

Nein-I-2

Interrogatory:

Please provide the daily, weekly, and monthly Migration Rider (Over/Under) adjustment for the last three years.

Response:

UGI, being a natural gas distribution company ("NGDC"), is the Supplier of Last Resort ("SOLR") that must stand ready to serve all shopping and non-shopping residential and small commercial/industrial natural gas customers within its service territory. See 66 Pa. C.S. § 2207.

UGI is subject to the provisions of Section 1307(f) of the Public Utility Code, 66 Pa.C.S. §1307(f), and the Pennsylvania Public Utility Commission's ("Commission") gas cost recovery regulations at 52 Pa. Code §§53.61 - 53.68, pertaining to the Company's recovery of annual purchase gas costs ("PGC").

Section 1307(f)(5) of the Public Utility Code provides that a NGDC's PGC rate is subject to adjustment based on the over- or under-collections, with interest, of the purchased gas costs incurred for providing natural gas supply service to its customers compared to the natural gas revenues collected over a historical period. Under this provision, a NGDC may recover from its customers over an annual period any variation between purchased gas costs incurred and PGC revenues collected during a prior annual period. This annual adjustment is commonly referred to as the "e-factor." The e-factor rate is developed by taking the prior year's over/under collection and dividing it by the total projected sales for the next year.

When a PGC customer switches to an alternate supplier it may still "owe" the PGC for under-collections incurred while the customer was receiving PGC service, or may be "owed" amounts resulting from excess amounts it paid while receiving PGC service; accordingly Section 1307(f)(6) of the Public Utility Code expressly requires NGDCs to establish migration riders by providing:

The [C]ommission shall require the customers transferring from sales to transportation service be subject to the over-or-under collection adjustment provided for in paragraph (5) and shall require further that customers transferring from transportation service to sales service not be subject to the

Ex. A
Pg 1 of 2

over-or-under collection adjustment *for an appropriate period* following either such transfer.

66 Pa. C.S. § 1307(f)(6) (emphasis added).

In accordance with Section 1307(f)(6), Section 13.5 of the Company's currently effective, Commission-approved Tariff – Gas – Pa. P.U.C. No. 5 contains a Migration Rider that refunds or collects over- or under-collections over a twelve-month period for customers switching to alternate suppliers. The intent of the Migration Rider is to ensure that PGC customers are not burdened or benefited by over- or under-collections associated with customers who elect to begin to receive natural gas supply service from alternate suppliers. Under the Tariff, UGI is permitted to charge the Migration Rider to shopping customers for a period no longer than twelve months from the date on which the customer switched to the alternative supplier.

Since it is the “e-factor” that is adjusted annually, enclosed as **Attachment I-2** is the supporting calculations showing the annual adjustments to the e-factor as filed with and approved by the Commission.

Ex. A
Pg 2 of 2

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:

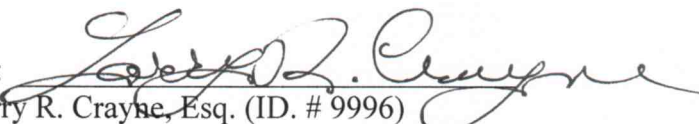
Administrative Law Judge David A. Salapa
P.O. Box 3265
Harrisburg, PA 17105

A copy of your response must also be mailed to:

Larry R. Crayne, PC
Attorney at Law
238 Johnston Road
Pittsburgh, PA 15241

Melanie J. Elatieh
Associate Counsel
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406

Respectfully submitted,
UGI Utilities, Inc.

By: 
Larry R. Crayne, Esq. (ID. # 9996)
Attorney at Law
238 Johnston Road
Pittsburgh, PA 15241

Melanie J. Elatieh (ID. # 209323)
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Phone: 610-337-1000
Fax: 610-992-3258
E-mail: elatiehm@ugicorp.com

Counsel for UGI Utilities, Inc.

Certificate of Service

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the participant, listed below, in accordance with the requirements of Sec. 1.54 (relating to service by a participant).

Kenneth Nein
203 Opal Avenue
Reading, PA 19606

Dated this 16th day of Aug, 2012



Larry R. Crayne
238 Johnston Road
Pittsburgh, PA 15241

Counsel for
UGI Utilities, Inc.