



THOMAS, NIESEN & THOMAS, LLC

*Attorneys and Counsellors at Law*

THOMAS T. NIESEN  
Direct Dial: 717-255-7641  
tniesen@tntlawfirm.com

February 2, 2015

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Green Hills Manor and The Heritage of Green Hills v. UGI Energy Services  
Docket No. C-2014-2420911

Dear Secretary Chiavetta:

We are counsel to Green Hills Manor and The Heritage of Green Hills in the above matter and are submitting, via electronic filing, their Reply Brief pursuant to the Post Hearing Order of Administrative Law Judge Buckley dated December 22, 2014. A copy of the Reply Brief is being served upon the persons and in the manner set forth on the certificate of service attached to it.

Sincerely,

THOMAS, NIESEN & THOMAS, LLC

By:

Thomas T. Niesen

Cc: Certificate of Service (w/encl.)  
Douglas Walther (via email, w/encl.)

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Green Hills Manor and  
the Heritage of Green Hills

v.

UGI Energy Services, LLC

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: Docket No. C-2014-2420911  
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**REPLY BRIEF OF GREEN HILLS MANOR AND THE HERITAGE OF GREEN HILLS  
ADDRESSING WHETHER THIS COMPLAINT AND ITS REQUEST FOR RELIEF  
IS PROPERLY BEFORE THE PUBLIC UTILITY COMMISSION**

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Thomas T. Niesen, Esquire  
PA ID # 31379  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101  
Tel: 717-255-7641  
Fax: 717-236-8278  
[tniesen@tntlawfirm.com](mailto:tniesen@tntlawfirm.com)

*Attorney for Green Hills Manor and The  
Heritage of Green Hills*

DATED: February 2, 2015

## I. INTRODUCTION

This matter involves a dispute concerning the enrollment start date for an electric generation supply agreement between Complainant Green Hills Manor/Heritage of Green Hills (“Green Hills” or “Complainant”) and UGI Energy Services, LLC (“UGIES” or “Respondent”).

As directed by the Post Hearing Order of Administrative Law Judge Buckley dated December 22, 2014, Green Hills, on January 22, 2015, filed a Main Brief addressing the following issue:

Whether this Complaint and its requested relief is properly before the Commission, or whether the Complaint is, in essence, a claim for damages that should be properly brought before a Court of Common Pleas?<sup>1</sup>

Complainant submits this Reply Brief in accordance with the Post Hearing Order. This Reply Brief is supplemental to Green Hills’ Main Brief.

For the reasons set forth below and in its Main Brief, Complainant maintains that the Public Utility Commission (“Commission”) should entertain and sustain this Complaint and direct UGIES to provide it with a billing adjustment/account credit in the amount of \$25,209.71.

## II. REPLY TO UGIES STATEMENT OF THE CASE

UGIES’ Statement of the Case offers no explanation why it failed to effect a smooth transition between the end date of Green Hills’ Liberty Power contract and the start date for the UGIES contract. Instead, UGIES relies solely on documents that it prepared without undertaking the simple due diligence of obtaining and reviewing Green Hills’ Liberty Power contract to learn the end date of that contract. After UGIES suggested that the Green Hills broker was unnecessary, Green Hills relied on UGIES to accomplish a smooth transition but UGIES “dropped the ball” and UGIES should not be heard to place the blame on Green Hills.

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<sup>1</sup> The Post Hearing Order orders the filing of Reply Briefs by February 2, 2015.

The marketing representative of UGIES, Mr. McCormick, unlike the representatives of Green Hills, is an experienced Certified Energy Professional.

### III. REPLY TO UGIES ARGUMENT

#### A. The Public Utility Commission Has Subject Matter Jurisdiction

In Section V.A of its Main Brief, UGIES argues that the Commission does not have subject matter jurisdiction. We addressed subject matter jurisdiction at length in the Green Hills Main Brief citing *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Opinion and Order entered December 18, 2014) (“*IDT Energy*”) and *Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Opinion and Order entered December 11, 2014), cited in the Post Hearing Order, and, also, *Nadav v. Respond Power, LLC*, Docket No. C-2014-2429159 (Order entered December 19, 2014), *Werle v. Respond Power, LLC*, Docket No. C-2014-2429158 (Motion of Vice Chairman Coleman and Statement of Commissioner Brown – Public Meeting held January 15, 2015) and *Yaglidereliler Corporation v. Blue Pilot Energy LLC*, Docket No. C-2014-2413732 (Opinion and Order entered January 16, 2015). These recent decisions hold that the Commission does have subject matter jurisdiction.

As summarized in the Green Hills’ Main Brief, UGIES marketed its service intending to produce a smooth supplier transition without supplier transaction gap. By failing to do so, UGIES violated the Public Utility Code and Commission regulations, including Section 2802(9) of the Electric Competition Act and 52 Pa. Code §54.2 (Definition of Customer Information), §54.4(a) (EGS prices billed must reflect the marketed prices), §54.7 (Advertised prices shall reflect prices in disclosure statements and billed prices) and §54.43 (A licensee is responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee,

its employees, agents or representatives). Determining whether a violation of such regulations occurred is squarely within the ambit of the Commission's jurisdictional powers.

**B. The Commission Has the Ability to Reform the Contract**

In Section V.B of its Main Brief, UGIES argues that the Commission does not have the ability under 66 Pa. C.S. § 508 to reform a contract between an EGS and a customer because an EGS is not a public utility. In *IDT Energy*, slip opinion page 16, the Commission explained, however, that EGSs, in fact, are public utilities for purposes of 66 Pa. C.S. §2809 and §2810. The Commission, consequently, does have jurisdiction under Section 508 to reform an agreement between an EGS and a customer to effect compliance with Sections 2809 and 2810 and Commission regulations thereunder. If the Commission were to agree with Green Hills and conclude that UGIES violated those Sections and applicable Commission regulations by marketing its service with the objective of producing a smooth supplier transition and then failing to do so, the Commission would have the authority under Section 508 to reform the Green Hills/UGIES contract.

**C. The Commission Has Jurisdiction to Order the Requested Relief**

In Section V.C of its Main Brief, UGIES argues that Green Hills' requested relief is essentially a claim for damages that the Commission is without jurisdiction to order. UGIES' argument fails to account for recent Commission holdings. As we addressed in the Green Hills Main Brief, the Commission has jurisdiction to order the requested relief, consistent with its holding in *IDT Energy* and other recent Commission proceedings. In *IDT Energy*, the Commission recognized that billing adjustments would be fully consistent with the policy objectives of the Electric Competition Act.<sup>2</sup>

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<sup>2</sup> *IDT Energy* at 18. See also *Nadav* at 7 (concluding that the Commission is authorized to require EGSs to provide refunds to retail customers in appropriate circumstances) and *Werle*, Statement of Commissioner Gladys M.

Here, relief would not be in the form of a refund since UGIES was not Green Hills' supplier during the period at issue. Appropriate relief here, rather, should be a Commission directive that UGIES provide a credit of \$25,209.71 to its Green Hills account. UGIES, in effect, should be required to provide Green Hills with a billing adjustment that reflects UGIES' originally intended marketing objective, i.e., a smooth transition of the service without the one month supplier transition gap. Such relief is just and reasonable given the circumstances and is clearly within the Commission's powers to order.

**D. Liberty Power Is Not Indispensable to Green Hills' Claim Against UGIES**

In Section V.D of its Main Brief, UGIES argues that Green Hills' complaint must be dismissed for failure to join Liberty Power as an indispensable party. Liberty Power, however, is not an indispensable party to Green Hills' claims that UGIES violated the Public Utility Code and Commission regulation by marketing its service with the objective of producing a smooth supplier transition and then failing to do so.


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Brown (affirming that the Commission has authority to determine appropriate monetary remedies in EGS complaint cases).

### III. CONCLUSION

For all the reasons set for the above and in its Main Brief, Green Hills Manor/Heritage of Green Hills submits that the Public Utility Commission should entertain and sustain this Complaint and direct UGI Energy Services LLC to provide it with a billing adjustment/account credit in the amount of \$25,209.71.

Respectfully submitted,



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Thomas T. Niesen, Esquire PA ID # 31379  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101  
Tel: 717-255-7641  
Fax: 717-236-8278  
[tniesen@tntlawfirm.com](mailto:tniesen@tntlawfirm.com)

*Attorney for  
Green Hills Manor and The Heritage of Green  
Hills*

DATED: February 2, 2015

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**CERTIFICATE OF SERVICE**


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I hereby certify that I have this 2<sup>nd</sup> day of February 2015, served a true and correct copy of the foregoing Reply Brief Of Green Hills Manor And The Heritage Of Green Hills Addressing Whether This Complaint And Its Request For Relief Is Properly Before The Public Utility Commission, upon the persons and in the manner set forth below:

VIA EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Honorable Dennis J. Buckley  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265  
[debuckley@pa.gov](mailto:debuckley@pa.gov)

Frank H. Markle  
Senior Counsel  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
[marklef@ugicorp.com](mailto:marklef@ugicorp.com)

  
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Thomas T. Niesen  
PA ID # 31379