

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Green Hills Manor and the Heritage of Green Hills	:	
	:	
	:	Docket No. C-2014-2420911
v.	:	
	:	
UGI Energy Services, LLC	:	

**REPLY OF UGI ENERGY SERVICES, LLC
TO THE EXCEPTIONS OF GREEN HILLS MANOR
AND THE HERITAGE OF GREEN HILLS**

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I. INTRODUCTION

This proceeding was initiated on July 11, 2014, when UGI Energy Services, LLC (“UGIES” or the “Company”) was served with a Complaint filed by Green Hills Manor and the Heritage of Green Hills (“Green Hills”) alleging that service for its four accounts under its contract with UGIES for competitive electric generation supply should have commenced on December 20, 2013, instead of January 20, 2014. In its Complaint, Green Hills requested that the Commission direct UGIES to roll back the start date or negotiate an alternate rate for the lapsed month. At the evidentiary hearing, Green Hills changed the relief it sought and requested that the Pennsylvania Public Utility Commission (“Commission”) reform its contract with UGIES to change the start date to December 20, 2013, and direct UGIES to pay Green Hills \$27,759.50 for the increased expenses for electric generation supply service that it incurred for the billing period at issue.

By Initial Decision issued on December 3, 2015, Administrative Law Judge Buckley correctly concluded that the authority of the Commission contracts under Section 508 of the Public Utility Code (the “Code”) is limited to public utilities and is not applicable to the private contracts between UGIES, Commission–licensed Electric Generation Supplier, and Green Hills. Green Hills filed Exceptions to the Initial Decision on December 23, 2015.

For the reasons explained below, the Initial Decision should be upheld and Green Hills’ Exceptions should be denied. The Initial Decision correctly concludes the Commission lacks jurisdiction over the issues raised in the Complaint and the various incarnations of relief requested by Green Hills lack any precedential basis and would relieve Green Hills of responsibility for the electricity supply contract it knowingly entered into.

II. REPLY TO EXCEPTIONS

A. THE COMMISSION LACKS JURISDICTION OVER THIS DISPUTE

As correctly determined in the Initial Decision, the Commission lacks jurisdiction over the issues raised in the Complaint. Green Hills' Complaint is, in essence, a breach of contract claim that seeks damages, over which the Commission wholly lacks jurisdiction. Therefore, for the reasons discussed in more detail below, the Complaint must be dismissed.

1. The Commission Lacks Jurisdiction over the Issues Raised in the Complaint

The Commission lacks jurisdiction over the issues raised in the Complaint. Since the Commission is a "creature of statute," it only possesses those powers that are granted to it by the Legislature and those "which arise by necessary implication." *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted). The Commission has limited jurisdiction over EGSs and their contracts. Importantly, the Commission has limited jurisdiction over certain EGS activities, which are outlined in Sections 2809 and 2810 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 2809-2810, and the Commission's relevant regulations, such as 52 Pa. Code §§ 54.3-54.7. These regulations address EGSs' bill format, disclosure statements, marketing and sales activities, and contract expiration notices. *See id.* The Commission's regulations also outline standards of conduct for EGSs, one of which is that the "licensee is responsible for any fraudulent[,], deceptive[,], or other unlawful marketing or billing acts performed by the licensee, its employe[es], agents, or representatives." 52 Pa. Code § 54.43(f).

Ignoring both the existence and clear language of the Master Power Sales Agreement ("MPSA") and customer confirmation agreements that it knowingly executed with UGIES, Green Hills focuses on a meeting that occurred between representatives of the two companies in August 2013, as purported "marketing" activities by the Company and the alleged representation

by UGIES sales representative, Ryan McCormick, that it would effectuate a “smooth transition” of service to Green Hills from Liberty Power, its then-incumbent supplier.¹ This phrase is repeated many times in the Exceptions. However, Green Hills wholly fails to substantiate that any of UGIES’s marketing or billing acts were fraudulent, deceptive, or otherwise unlawful. Instead, Green Hills focuses on the “intent” of UGIES when entering into its contract with Green Hills. Specifically, Green Hills alleges that “UGIES intended to initiate its service without a supplier gap, but failed to take steps necessary to determine the end date of the Liberty Power contract.” *See* Green Hills Exceptions, pp. 6, 8. Green Hills is struggling desperately to shape a claim against UGIES that will legally permit the Commission to impose the extraordinary and unprecedented remedy of passing through the high variable rate charges of another supplier -- Liberty Power – from whom Green Hills was contractually obligated to take service. In reality, Green Hills is truly asking the Commission to interpret the terms and conditions of the MPSA and the customer confirmation agreements to determine UGIES’ intent.

The Commission does not have jurisdiction to interpret the contract terms at issue. The Commission only has limited power to review the terms provided in the disclosure statement, which is not at issue here. Moreover, it is inconsequential whether the EGS contract provision at issue concerns the EGS rates or the date that service begins. The Commission entirely lacks jurisdiction to interpret the terms and conditions of the contract at issue. That jurisdiction solely rests in a court of general jurisdiction. Furthermore, even if the Commission had the power to reform the contract as requested, the Commission would not have subject matter jurisdiction to review and interpret the contract terms and conditions to determine whether there was a breach of the reformed contract. *See IDT Energy*, at p. 24 (citing *Allport Water Auth. V. Winburne*

¹ Mr. McCormick stated that he did not recall if he said this or not. (Tr. 48).

Water Co., 393 A.2d 673 (Pa. Super. 1978)). Even if the Commission did have that power, the start date is unambiguously stated in the MPSA and the four customer confirmation agreements. Therefore, UGIES' intent is explicitly laid out in the black and white terms of the contract.

In an effort to support its claim that the Commission has jurisdiction over the issues raised in the Complaint, Green Hills simply cites and quotes large portions of two recent decisions by the Commission. But Green Hills utterly fails to apply these decisions to the case, preferring to rely on broad statements, such as, "Applying *IDT Energy* and *Yaglidereliler*, the Commission has jurisdiction to hear this matter and this Complaint is properly before it." . A closer examination and an application of the cases cited by Green Hills demonstrate that the Commission does not have jurisdiction over this Complaint.

In *IDT Energy*, the Commission found, among other things, that the Commission has the authority to direct an EGS to issue a credit or refund when a customer has been overcharged in violation of its disclosure statement. *See Commonwealth v. IDT Energy, Inc.*, Docket No. C-2014-2427657, at pp. 16-18 (Order Entered Dec. 18, 2014). However, Green Hills is not alleging that UGIES overcharged Green Hills in violation of its disclosure statement, namely because UGIES did not charge Green Hills at all for the billing period in question since it did not provide competitive electric generation supply to Green Hills during that time. It is completely unclear how *IDT Energy* provides support for that position, and even more so because Green Hills wholly fails to apply the decision to the facts of this case.

The other case quoted at length by Green Hills is *Yaglidereliler Corp. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2413732 (Order Entered Jan. 16, 2015). *Yaglidereliler* involved a complaint filed by a customer against an EGS for the excessive charges it incurred through a variable rate product. *Id.* at p. 2. The complainant contended that the EGS assured

him EGS that his rate was the “most reasonably priced” and that he “never would have expected” for the rate to increase so much. *Id.* at p. 19. The Commission found that it had jurisdiction to evaluate the “propriety of Blue Pilot’s marketing,” particularly if “additional oral information provided by an EGS representative may have had a bearing on the Complainant’s informed decision to agree to a variable rate product with Blue Pilot.” *Id.* at p. 21. Therefore, the Commission found it “does have subject matter jurisdiction to regulate certain aspects of the services provided by EGSs, including their marketing and sales activities and practices.” *Id.* at p. 22. Consequently, the Commission concluded that Blue Pilot was not entitled to a judgment as a matter of law because there were material facts in dispute as to whether Blue Pilot violated 52 Pa. Code § 54.43 by not providing accurate information and by engaging in “fraudulent, deceptive, or other unlawful marketing or billing acts.” *Id.*

2. The Commission Lacks Jurisdiction to Award Contract Damages

Green Hills’ Complaint should be dismissed because the Commission lacks jurisdiction over the requested relief Green Hills’ requested relief is still essentially a claim for damages. Green Hills states that “the Commission can and should exercise jurisdiction and direct a monetary remedy of \$25,209.71. Green Hills Exception, p. 7. This “monetary remedy” amounts to contract damages, calculated as the difference between the variable rate charges Green Hills paid to Liberty during the December 2013 – January 2014 billing cycle and the charges Green Hills would have paid had it contracted with UGIES to commence service a month sooner. It is well-settled that the Commission does not have the power to award damages. As stated by the Supreme Court of Pennsylvania, “It is clear that the remedial and enforcement powers vested in the PUC by the Public Utility Law were designed to allow the PUC to enforce its orders and regulations but not to empower the PUC to award damages.” *Feingold v. Bell of Pa.*, 383 A.2d 791, 795 (Pa. 1977). The Commission has made no distinction between refunds and credits

when discussing the remedies available from EGSs. *See IDT Energy*, at pp. 17-18; *Nadav v. Respond Power, LLC*, Docket No. C-2014-2429159, at p. 7 (Order Entered Dec. 19, 2014). Both are considered “billing adjustments” by the Commission, and the Commission only has held that it has the power to order an EGS to provide a billing adjustment (whether a credit or a refund) when there has been slamming or overbilling by that EGS. *See IDT Energy*, at pp. 17-18; *Nadav*, at p. 7. In *IDT Energy*, the Commission held that it “has plenary authority under Section 501, 66 Pa. C.S. § 501, to direct an EGS to issue a credit or refund for an over bill” and to “direct EGS refunds for ‘slamming’” or otherwise switching a customer without his or her consent. *Id.* at pp. 17-18 (emphasis added). The Commission stated further that “having the authority to order EGS billing adjustments, including refunds, under the appropriate circumstances, helps ensure that EGSs comply with the Commission’s Regulations and bill customers in accordance with their disclosure statement.” *Id.* at p. 18. In *Nadav*, the Commission found that it did not “lack authority to order a refund or credit,” concluding “that a refund is an appropriate remedy when a customer’s supplier has been changed without the customer’s affirmative consent.” *Id.* at p. 7 (emphasis added) (citing 66 Pa. C.S. § 2807(d)(1)). Moreover, the Commission likewise found that the Commission’s regulations “require an EGS to provide a full refund to customers of all generation charges resulting from an unauthorized switch.” *Id.* (citing 52 Pa. Code § 57.177). In this case, however, Green Hills does not allege slamming or overbilling and, therefore, the Commission lacks the power to order UGIES to provide a billing adjustment, whether it is a credit or a refund.

Green Hills filed this Complaint because it is simply unhappy with the deal it struck and wants compensation for its own failures. If the MPSA and customer confirmation agreements stated the wrong start date, then Green Hills should not have signed them. Green Hills is the

only party that had access to the MPSA, the customer confirmation agreements, and its contract with Liberty. Moreover, Green Hills had several months to review these documents in its possession and find that there would be a gap in service. Under the Commission's regulations and the terms of Green Hills' contract with Liberty, Green Hills should have received multiple written notices of the end of the fixed price period under its contract and could have revisited the new contractual start date with UGIES at the time of those notices. It also could have contacted Liberty or Metropolitan Edison Company (its electric distribution company) before the billing period at issue began to see when service would stop with Liberty and begin with UGIES. Considering Green Hills' concerns also only arose after the January bill was generated, it appears that Green Hills failed to take any of these actions.

III. CONCLUSION

WHEREFORE, UGI Energy Services, LLC respectfully requests that Administrative Law Judge Dennis J. Buckley find that the Complaint and its requested relief are not properly before the Pennsylvania Public Utility Commission and dismiss the Complaint of Green Hills Manor and the Heritage of Green Hills.

Respectfully submitted,



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CERTIFICATE OF SERVICE

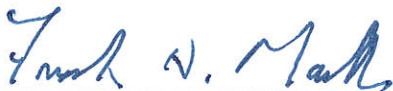
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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