

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Bonita Mitchell

v.

UGI Utilities, Inc.

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:  
:

C-20065810

ORDER DENYING MOTION TO DISMISS  
AND SETTING RESOLUTION CONFERENCE

Before  
Veronica A. Smith  
Chief Administrative Law Judge

**DOCKETED**  
APR 18 2006

DOCUMENT  
FOLDER

HISTORY OF THE PROCEEDING

On January 27, 2006, Bonita Mitchell (Complainant) filed a Formal Complaint against UGI Utilities, Inc. (Respondent) challenging its most recent rate increase. Complainant objects to the Commission approving this increase and requests that the Commission rescind this increase and freeze Respondent's rates for five years. On February 16, 2006, Respondent filed an Answer and New Matter and a Motion to Dismiss the Complaint on the basis that it is insufficient as to substance or in the alternative, consolidate this complaint with Respondent's next 1307(f) gas cost rate filing.

According to Commission records, as of March 30, 2006, Complainant did not file a response to the New Matter<sup>1</sup> portion of Respondent's Answer or its Motion to Dismiss<sup>2</sup>. Therefore, the factual allegations raised as New Matter are deemed admitted<sup>3</sup>. This matter was

<sup>1</sup> Pursuant to 52 Pa. Code §5.62(c) Complainant's response to New Matter was due on or before March 9, 2006.

<sup>2</sup> Pursuant to 52 Pa. Code §5.101(d) a reply to the Motion to Dismiss was due on or before February 27, 2006.

<sup>3</sup> The Commission's regulations state: "A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code §5.62(c).

assigned to me by Motion Judge Assignment Notice dated February 27, 2006. The Motion is ripe for ruling.

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that the complaint fails to state a cause of action upon which the Commission can grant relief and is, therefore, insufficient as to substance.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code §§5.101. Commission preliminary motion practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roe v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

The Complaint challenges a rate increase granted to Respondent which became effective on December 1, 2005. Complainant requests that the Commission rescind this increase and freeze Respondent's rates for the next five years.

Respondent raised as New Matter the following factual allegations: that Complainant is challenging an increase in its gas supply charges and that these rates were approved by the Commission by Order entered October 28, 2005 at Docket No. R-00050539. In its Motion, Respondent argues that the rates Complainant is disputing are not subject to challenge until its next 1307(f) rate filing.

For the reasons set forth below, Respondent's Motion to Dismiss must be denied.

The Public Utility Code (the Code) requires that the rates charged by a utility be just and reasonable. 66 Pa. C.S. §1301. Although rates on file with the Commission are prima facie reasonable, the Code allows any person to file a complaint with the Commission "setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission. 66 Pa. C.S. §§316, 701; *See Kossman v. Pa. PUC*, 649 A.2d 1147 (Pa. Commw. 1997).

Complainant is not challenging the quarterly gas cost reconciliation filings permitted by 52 Pa. Code 53.64(i)(5)(i), as averred by Respondent, but rather the gas cost rates approved by the Commission after investigation of Respondent's annual filing made pursuant to 66 Pa. C.S. 1301. Quarterly reconciliation filings are effective on one days notice and are not subject to challenge until Respondent's next annual 1307(f) proceeding. *See* 52 Pa. Code §53.64(i)(5)(iv). However, Complainant is challenging the current rates charged by the Respondent and these may be challenged at any time. *See* 66 Pa. C.S. §701.

Accordingly, Respondent's Preliminary Motion to Dismiss is denied. However, an effective way to resolve this complaint may be to provide Complainant an explanation of the ratemaking process. Accordingly, this case will be set for resolution conference to allow the

parties the opportunity to attempt to resolve this dispute without a hearing. The parties are directed to attempt to resolve this matter themselves and are strongly encouraged to participate in this process. This process is consistent with the Commission's regulations at 52 Pa. Code §§ 5.231(a) and 69.391.

Respondent shall contact Complainant no later than April 10, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of this case. The conference shall occur no later than April 30, 2006. No later than ten days following the conference, Respondent shall file a report with Herbert R. Nurick, Mediation Coordinator, setting forth:

- (a) The date, time and location of the conference;
- (b) The participants representing each party;
- (c) A statement describing whether a full resolution, including withdrawal of the complaint, was achieved; and, if not, whether the parties consent to have this case set for mediation by Commission staff; and
- (d) A statement listing any resolved issues, if a full resolution was not achieved.

Should the conference not take place by the due date, Respondent shall file a report with the mediator, no later than May 10, 2006, giving the reason(s) why the due date was not met.

The Commission encourages mediation if the parties cannot reach an agreement through the resolution conference.<sup>4</sup> If the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, they are entitled to a hearing, which will include the presentation of oral testimony and other evidence before a Commission Administrative Law Judge, who will consider the case and issue a written decision.

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<sup>4</sup> Mediation is an informal process in which the parties attempt to resolve the case with the help of a mediator. The mediator is a neutral staff member of the Commission who does not give advice, make a decision or represent any party. Instead, the mediator assists the parties in their efforts to come to an agreement.

Should this case proceed to hearing, Complainant is advised that she will bear the burden of proof and must present testimony and documentary evidence sufficient to demonstrate that the rates approved by the Commission and charged by Respondent are unreasonable.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by UGI Utilities, Inc., seeking dismissal of the Complaint filed by Bonita Mitchell, at PUC Docket No. C-20065810 is denied.

2. That this case be set for resolution conference

3. That UGI Utilities, Inc. shall contact Bonita Mitchell no later than April 10, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution if the issues raised in the Complaint.

4. That the resolution conference shall take place no later than April 30, 2006.

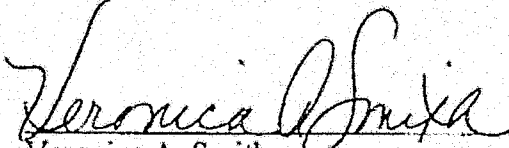
5. That UGI Utilities, Inc. shall file a report addressed to Herbert R. Nurick, Mediation Coordinator, Office of Administrative Law Judge, P.O. Box 3265, Harrisburg, PA 17105-3265, no later than ten days following the resolution conference setting forth:

- (a) the date, time and location of the conference;
- (b) the participants for each party
- (c) a statement describing whether a full resolution, including withdrawal of the complaint was achieved; and, if not, whether the parties consent to have this case set for mediation by Commission staff; and
- (d) a statement listing any resolved issues, if a full resolution was not achieved.

6. That, if the resolution conference does not take place by the due date, UGI Utilities, Inc. shall file a report with the mediator, no later than May 10, 2006 giving the reason(s) why the due date was not met.

7. That, if the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, this matter will be set for hearing.

Dated: March 31, 2006

  
Veronica A. Smith  
Chief Administrative Law Judge

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(412) 831-5462 (h)

ORIGINAL

May 9, 2006

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

DOCUMENT  
FOLDER

RECEIVED  
2006 MAY 12 AM 8:58  
PA P.U.C.  
SECRETARY'S BUREAU

**Re: Bonita Mitchell v. UGI Utilities, Inc.**  
**Complaint Docket No. C-20065810**

Dear Mr. McNulty:

Pursuant to Section 5.24 (b) of the Commission's regulations, UGI Utilities, Inc., (UGI) hereby represents and certifies to the Commission that the Complainant has advised UGI that she does not wish to engage in a resolution conference regarding this Complainant and has further acknowledged to UGI that the Complainant no longer wishes to pursue the Complaint.

I hereby certify that a copy of this certification is being served upon the Complainant, via regular U.S. mail, on the above date. Unless the Complainant objects to this certification within 10 days of filing, the complaint docket shall be marked closed.

Please file the original and three copies of this Certification and return a date-stamped copy to me in the envelope provided for your convenience.

Sincerely,

  
Larry R. Crayne

**DOCKETED**  
MAY 16 2006

Enc: Original, plus four copies

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

DATE: May 15, 2006  
SUBJECT: Bonita Mitchell v. UGI Utilities, Inc.  
C-20065810  
TO: Wanda Zeiders  
Docket Management  
FROM: Linda Salome, ALJ Support Staff  
Office of Administrative Law Judge

DOCUMENT  
FOLDER

On May 12, 2006, a Certificate of Satisfaction was filed in the above-captioned proceeding. If no objection is filed to this certificate within 10 days of service, this proceeding will be closed.

All parties should be notified that the case is closed and a copy of that notification placed in the document folder.

Attachment

pc: Herbert Nurick, Mediation Coordinator  
Beth Plantz  
Case File

DOCKETED  
MAY 17 2006