

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

Randal Stewart,
Complainant,

Docket No. C-2018-2642778

VS.

UGI Utilities, Inc. – Gas Division,
Respondent.

Preliminary Objections

AND NOW comes Respondent, UGI Utilities, Inc. - Gas Division, (UGI), pursuant to 52 *Pa. Code*, Section 5.101 (a) (4), and files the following Preliminary Objections

A. Legal Insufficiency of Pleading

1. 52 Pa. Code § 5.101(a)(1) provides that a party to a proceeding may preliminarily object for legal insufficiency of a pleading.

2. Randal Stewart (Complainant) a customer with account number 411004764709, commenced the within action with the filing a formal complaint on January 11, 2018.

3. Complainant alleges in pertinent part that he went to switch to a new supplier at a much lower rate and UGI told him it will take two billing cycles to switch, thus eliminating his ability to enjoy those lower rates for the coldest two months of the year. Complainant further alleges that this is not acceptable when his electric utility can change his supplier in less than a week and that UGI has taken the position that it can change his supplier at its leisure, and that he has no recourse.

4. On December 22, 2017, UGI received information that Complainant was switching from his previous supplier Shipley Energy Company to Dominion Energy Solutions.

5. On December 25, 2017, UGI mailed a letter to Complainant informing him that UGI's Customer Choice Program guidelines require that a change of Natural Gas Suppliers can only be effective on a UGI scheduled meter reading date and that he would begin to receive natural gas from his new alternative supplier on February 28, 2018, the scheduled meter reading date. Complainant was further advised that he could cancel this Natural Gas Supplier change by contacting UGI within 5 days of the date of the letter. Complainant failed to contact UGI within 5 days.

6. Per the filed and approved UGI Utilities, Inc. – Gas Division Gas Tariff, Including The Gas Service Tariff No. 6 and Gas Choice Supplier Tariff No. 6-S, (hereinafter the “Tariff”), enrollments received after the 15th of any calendar month, the customer will be switched to Rate Schedule RT and NT, where the customer does not respond within 5 days from the Company’s mailing of a letter confirming the election to be served by the Choice Supplier, on the Customer’s regularly scheduled meter reading date in the second calendar month following the month the enrollment information was received. (See ¶9.3 of the Gas Choice Supplier Tariff, Rule 9 - Enrollment of Customers Into Rate Schedules RT and NT).

7. Under 66 Pa. Cons. Stat. § 501 et seq., the Commission has exclusive jurisdiction over the reasonableness, adequacy, and sufficiency of public utility services. *Bell Tel. Co. v. Uni-Lite, Inc.*, 294 Pa. Super. 89, 439 A.2d 763, 1982 Pa. Super. LEXIS 3114 (Pa. Super. Ct. 1982).

8. In reviewing preliminary objections, only the facts in the pleadings filed by the non-moving party can be presumed to be true in order to determine whether recovery is possible. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A.2d 413 (Pa.Cmwlt. 2006) aff’d, 492 Pa. 304, 924 A.2d 1203 (2007).

9. The reviewing authority will accept as true the well-pled averments set forth in the complaint, and all inferences reasonably deducible therefrom. Conclusions of law, unwarranted inferences from facts, argumentative allegations, **or expressions of opinion** will not be accepted as true for purposes of evaluating preliminary objections. (Emphasis added). *Corman, et al. v. The National Collegiate Athletic Association*, 74 A.2d 1149 (Pa.Cmwlt. 2013), 2013 Pa. Commw. LEXIS 353.

10. In order for Complainant to prevail ultimately, there must be a statute, regulation or order, which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by Respondent in violation of any law, which the Commission has, jurisdiction to administer. 66 Pa. C.S. § 701; 52 Pa. Code § 5.21(a).

11. The Commission can only accept as true the well-pled averments set forth in the complaint, and all inferences reasonably deducible therefrom. Complainant’s conclusions of law and expressions of opinion cannot be accepted as true for purposes of evaluating preliminary objections

12. The averments of this Complaint fail to allege a violation of the Public Utility Code, Commission regulations or the UGI filed and approved Tariff as a matter of law. *Nicholla Anderson v. Philadelphia Gas Works*, Docket No. F-00825712 (Final Order entered August 30, 2002); also see, *Sophia Ottaviano v. Philadelphia Gas Works*, Docket No. C-20066357 (Final Order entered September 22, 2006); *Shirley Surrec v Columbia Gas of Pennsylvania, Inc.* (I.D. April 7, 2014) (remanded for consideration of whether Columbia provided adequate service under a Commission-approved weatherization program).

Wherefore, UGI requests that the Complaint be dismissed as a matter of law. Since no factual issue pertinent to the resolution of this complaint exists which the Commission has jurisdiction to consider, a hearing is unnecessary and Respondent is entitled to judgment as a

matter of law. Granting the UGI motion for dismissal of this Complaint is appropriate in these circumstances.

Notice to Plead

To: Randal Stewart:

You are hereby notified to file a written response to the above Preliminary Objections within ten (10) days from service hereof or a judgment may be entered against you. The response must be mailed to the Secretary of the Public Utility Commission:

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

A copy of your response must also be mailed to:

Jorge M. Pereira, Esquire
Prince Law Offices, P.C.
646 Lenape Road,
Bechtelsville, PA 19505-9135

Respectfully submitted,

UGI Utilities, Inc.



By: _____
Jorge M. Pereira, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this th day of January, 2018, served a true and correct copy of the foregoing document in the manner and upon the persons listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

VIA FIRST CLASS MAIL

Randal Stewart
526 Pine Street
Denver, PA 17517-1432



Jorge Pereira
Counsel for UGI Utilities, Inc. – Gas
Division