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File #: 159332

February 23, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Crescent Hotel - Plymouth Meeting, LP v. PECO Energy Company
Docket No. C-2008-2068258**


**Crescent Hotel - Plymouth Meeting, LP v. UGI Corporation
Docket No. C-2008-2068267**

**Crescent Hotel - Plymouth Meeting, LP v. Celeren Corporation
Docket No. C-2009-2089563**

Dear Secretary Chiavetta:

Enclosed for filing is the Petition of UGI Energy Services LLC for Interlocutory Review and Answer to Material Question in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin T. Ryan

DTR/skr
Enclosures

cc: Honorable Marta Guhl
Certificate of Service

CERTIFICATE OF SERVICE

(Docket Nos. C-2008-2068258, C-2008-2068267 and C-2009-2089563)

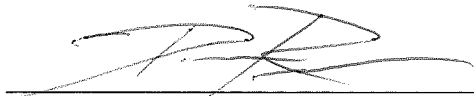
I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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Counsel for PECO Energy Company

Date: February 23, 2018



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Crescent Hotel – Plymouth Meeting, LP	:	Docket Nos. C-2008-2068258
v.	:	C-2008-2068267
PECO Energy Company,	:	C-2009-2089563
UGI Corporation, and	:	
Celeren Corporation	:	

**PETITION OF UGI ENERGY SERVICES, LLC FOR
INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTION**

UGI Energy Services, LLC (“UGIES”) hereby files this Petition for Interlocutory Review and Answer to Material Question, pursuant to 52 Pa. Code § 5.302, and states as follows:

I. BACKGROUND

1. On October 1, 2008, Crescent Hotel – Plymouth Meeting, LP (“Complainant”) filed Formal Complaints with the Pennsylvania Public Utility Commission (“PUC”) against PECO Energy Company (“PECO”), Celeren Corporation (“Celeren”), and UGI Energy Services, Inc., whose Natural Gas Supplier (“NGS”) license was later transferred to UGIES.

2. The Complainant subsequently amended its Complaint twice, mostly recently on July 29, 2014. The only remaining count against UGIES is Count II of the Second Amended Complaint, which avers UGIES breached an unspecified duty by allegedly not timely notifying Complainant when Celeren, Complainant’s billing agent, did not make payments for utility service.

3. On August 17, 2017, UGIES filed a Motion for Summary Judgment requesting Count II to be dismissed in its entirety and with prejudice because, among other reasons, no statute, PUC regulation, or PUC order requires a licensed NGS to notify a large commercial and industrial customer when the customer’s authorized billing agent fails to remit timely payment.

4. On October 26, 2017, Administrative Law Judge Marta Guhl (“ALJ”) issued an Order denying UGIES’s Motion for Summary Judgment (“Order”). While the ALJ recognized that UGIES is an NGS, not a public utility, and confirmed the prior ruling that any breach of contract claim or request for damages is dismissed, the ALJ nevertheless found that “the notice issues as they relate to Section 1501 of the Public Utility Code should be addressed and heard at hearing.” *See* Order at 6, 10-13. The ALJ

reasoned that the PUC has jurisdiction under Section 1501 to determine “whether a utility has provided adequate, efficient, safe and reasonable service.” Order, p. 11 (emphasis added). Further, the ALJ relied upon *Digital 833 Chestnut LLC v. PECO Energy Co.*, Docket No. C-2008-2076610 (Order entered Mar. 26, 2010), which held that a utility’s failure to notify a customer may violate Section 1501. Order at 11-12.

5. On November 16, 2017, UGIES filed a Motion to Vacate and Clarify the Order, arguing that the ALJ erred in finding that UGIES, which is not a public utility, is subject to 66 Pa.C.S. § 1501 and otherwise not dismissing Count II. To date, the ALJ has not ruled on the Motion.

II. MATERIAL QUESTION

6. Whether the ALJ erred in finding that the PUC has subject matter jurisdiction under 66 Pa.C.S. § 1501 over the service of a non-utility, such as UGIES. *Suggested answer in the affirmative.*

III. COMPELLING REASONS FOR INTERLOCUTORY REVIEW

7. Interlocutory review of this material question will prevent substantial prejudice and expedite the conduct of this complaint proceeding.

8. UGIES is not a public utility. As a result, UGIES is not subject to 66 Pa.C.S. § 1501, as held by the ALJ. Section 1501 requires that a “public utility . . . furnish and maintain adequate, efficient, safe, and reasonable service and facilities.” See 66 Pa.C.S. § 1501. UGIES is a licensed NGS, which “is not a public utility as defined in section 102.” *Id.* § 2202; see *id.* § 102 (defining “public utility”). As the Commonwealth Court has held, “Section 102 does not contain an exception to the statement that NGSs are not public utilities.” *Indep. Oil & Gas Ass’n v. Pa. PUC*, 804 A.2d 693, 702 (Pa. Cmwlth. 2002) (emphasis in original). Therefore, provisions in the Public Utility Code that apply to public utilities are inapplicable to NGSs. See *id.* at 702-03 (finding that 66 Pa.C.S. § 510 did not apply to NGSs because it only referenced “public utilities”). Therefore, the ALJ’s finding that UGIES could have violated Section 1501 is incorrect as a matter of law. See *Rama Constr., Inc. v. Hess Corp.*, 2008 Pa. PUC LEXIS 958, at *1, 16-17 (Oct. 16, 2008) (Initial Decision) (finding that an NGS could not have violated Section 1501 as a matter of law), *became final*, 2009 Pa. PUC LEXIS 957 (Order entered Feb. 19, 2009).

9. If the ALJ's decision is not corrected, the parties and the PUC will have to devote substantial time and expenses litigating whether UGIES violated Section 1501, which on its face does not apply to an NGS, such as UGIES. Resolving this material question will significantly reduce the time and expense incurred by all parties. Forcing parties to litigate issues clearly outside the PUC's jurisdiction would be unreasonable and substantially prejudice the parties.

10. The only remaining cause of action alleged against UGIES is Count II, which claims that UGIES breached an unspecified "duty" by failing to notify Complainant when Celeren, Complainant's authorized billing agent, failed to pay for the natural gas supply provided by UGIES. The Commission's determination that UGIES is not a utility and thus owed no public utility duty to Complainant under Section 1501 should result in the dismissal of Count II. However, even if Count II of the Complaint is not dismissed, resolving these material questions will properly define the issues in this proceeding. Either way, this will expedite the proceeding, produce a complete record on the relevant issues, and facilitate the PUC's review.

IV. RELIEF REQUESTED

WHEREFORE, UGIES respectfully requests that the PUC answer the material question in the affirmative and dismiss Count II of the Complaint against UGIES in its entirety and with prejudice.

Respectfully submitted,



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Date: February 23, 2018

Counsel for UGI Energy Services, LLC

VERIFICATION

I, Cedric A. Haywood, being the Director of Collections at UGI Energy Services, LLC, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect UGI Energy Services, LLC to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 2/23/18

Cedric A. Haywood