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March 7, 2018

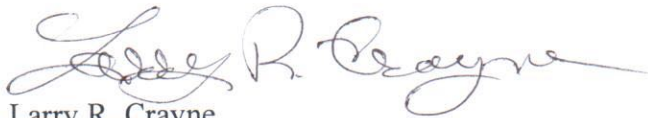
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Akeem Simmons, et. al., v. UGI Utilities, Inc.**  
**Complaint Docket No. C-2017-2605783**

Dear Ms. Chiavetta:

Enclosed is an electronically filed copy of UGI Utilities, Inc's Reply to Exceptions to Initial Decision in the referenced Formal Complaint. A copy of the document has been served on the Complainants.

Sincerely,



Larry R. Crayne

cc: Akeem Simmons  
429 Crescent Street  
Harrisburg, PA 17104

Yvonne Whisenant  
1521 Inverness Drive  
Mechanicsburg, PA 17050

Ashley Mowery  
Inmate #OX9536  
State Correctional Institute  
451 Fullerton Avenue  
Cambridge Springs, PA 16403

Office of Special Assistants  
[ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)

## Commonwealth of Pennsylvania

### Before the Pennsylvania Public Utility Commission

In the Matter of:

Akeem Simmons, et al.,  
Complainants,

Complaint Docket  
No. C-2017-2605783

VS.

UGI Utilities., Inc.  
Respondent.

### Reply to Exceptions to Initial Decision

**AND NOW** comes Respondent, UGI Utilities, Inc., (Respondent), and replies to Exceptions filed by Complainant Yvonne Whisenant in the above proceeding. Complainant has filed exceptions to the Initial Decision of Administrative Law Judge Joel H. Cheskis dated January 22, 2018 that found Complainants failed to carry their burden to demonstrate that UGI violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided at the service address. I.D., page 23.

The Exceptions by Ms. Whisenant are generally numbered in relation to the Initial Decision, but do not identify the findings of fact or conclusions of law about which she complains and fail to cite relevant pages of the transcript and Initial Decision. The Exceptions include Ms. Whisenant's conclusions of fact and law based upon her misrepresentations in regard to the evidence of record. Further, Ms. Whisenant includes numerous hearsay representations of matters outside the record of this proceeding. Such matters are simply argument not supported by the record and should be disregarded.

Complainant raises no new issues in her Exceptions to the Initial Decision. She simply continues to argue matters that were raised in her voluminous pleadings and letters submitted to the ALJ and that were addressed and rejected in the Initial Decision. UGI will respond *seriatim* to the Exceptions

1. Pages 2 and 3, Page 9, item 56.

Complainant again argues she should have been provided with an in-person hearing and was denied subpoena authority. To the contrary, Complainant had all of the subpoena authority available to her that is available pursuant to 52 *Pa Code*, Section 5.421. Complainant filed no applications for the attendance of any witnesses or the production of any documents. Therefore, Complainant should not now be heard to complain "...about witness to be subpoenaed for testimony. Nevertheless, the Administrative Law Judge considered a letter by Ms. Whisenant dated September 20, 2017 requesting an additional in-person hearing and the subpoena of

witness. The Administrative Law Judge granted Ms. Whisenant's petition to reopen the record in part by order dated November 6, 2017. Her additional arguments were admitted into the record, but the request for an additional in-person hearing and for subpoenas was correctly denied. As stated by UGI in a letter to the ALJ dated September 26, 2017: "While the additional matters stated by Ms. Whisenant may have relevance to a civil action between the parties, the additional matters Ms. Whisenant desires to address are not germane to the formal complaint. An additional hearing and subpoena of the numerous other individuals is unnecessary. The controlling fact is that the damage to the property of UGI created a hazardous situation. Upon discovery of the damage, UGI took appropriate action to make the situation safe. If service is to be restored, the parties with custody and control of the property are responsible for payment of the damages and costs to restore the service."

2. Page 4, items 8 & 9; Page 6, item 26.

There is no basis for this exception. The fact that Ms. Whisenant reported what she considered to be suspicious activity, etc., to law enforcement officials is neither relevant nor material to the fact that damage occurred to the UGI facilities while Ms. Whisenant had power of attorney for the property and the property was under the dominion and control of Ms. Whisenant and Complainants.

3. Page 4, Item 10.

There is no basis for this exception. The purchase of a water meter as opposed to a water heater is neither relevant nor material to the gas meter tampering and theft of service that occurred at the property.

4. Page 5, item 16.

The I.D. Finding of Fact No 16 should read February 7, 2017, which was the date that the UGI HVAC Service Technician pursuant to Mr. Simmons's request visited the residence and found the meter tampering. At the Service Technician's request, UGI's Revenue Protection Investigator Richard Klopp came to the property and confirmed the meter tampering. Thereafter, UGI took the necessary action to make the property safe. Mr. Klopp is certainly a competent witness to testify to the meter tampering. There is no need for the presentation of cumulative evidence, particularly when the HVAC Service Technician is no longer an employee of UGI's HVAC company and is unavailable to testify.

5. Page 6, items 28 & 29; Page 7, item 36, Page 9, item 56.

Complainant continues to argue that UGI by previously providing service to the property should have known that someone would attempt to steal utility service. Ms. Mowery purchased the property in 2015. See UGI Exhibit R-2. As stated by Ms. Whisenant, apparently Attorney Hannon had Power of Attorney for Ms. Mowery at an earlier point in time and service was requested sometime prior to the October 29, 2015 Work Order #369501. Ms. Hannon had every opportunity to testify at the hearing, but apparently chose to hang up and leave the conference

bridge. Ms. Whisenant throughout the Excerptions makes a tenuous and confusing argument that UGI should have known that other parties had access to the property by reason of alleged service calls. Regarding Ms. Whisenant's demand for history of all service calls and delinquencies at the subject property, such a request would involve confidential information to which neither Complainants nor Ms. Whisenant are privy and would violate customer confidentially provisions. Therefore, Ms. Whisenant has no right to such information. As a public utility, UGI has the responsibility to respond to requests for service. However, UGI has no responsibility to continuously conduct extensive investigations and demand proof of ownership or residency when responding to service calls. The protection of the property is the responsibility of the owner of the property. *Darnell Fassett v. Philadelphia Gas Works*, Opinion and Order entered April 27, 2015 at Docket No. F-2014-240854. As testified to by Mr. Huber, a search of the UGI computer records indicated that the only call by Ms. Whisenant was a February 17, 2017 call by Ms. Whisenant regarding service for the furnace. Since neither UGI nor Ms. Whisenant can determine with certainty when the meter tampering occurred, Ms. Whisenant without positive proof cannot shift responsibility to UGI for protection of the UGI equipment by speculation and innuendo as to what may have previously occurred in regard to the property.

6. Page 7. Items 35, 37 - 40.

UGI Exhibits were mailed to Complainant on August 14, 2017, eight days before the scheduled August 22, 2017 hearing. Ms. Whisenant admitted she had the exhibits at the hearing. Rarely does the U.S. Postal Service take more than a couple of days to deliver first class postage from Pittsburgh to the Harrisburg area. Ms. Mowery was mailed a copy of the Exhibits, but she may not have had the exhibits because she was incarcerated and Ms. Whisenant did not provide an inmate number for her mailing. Since Ms. Whisenant was acting as agent for Ms. Mowery, Ms. Whisenant had the responsibility to communicate with Ms. Mowery regarding any questions or concerns she may have had about the exhibits.

7. Pages 11 – 19.

This Exception is an argument that because a crime was committed Ms. Whisenant is not responsible for the protection of Ms. Mowery's property. As has been shown, Ms. Whisenant had power of Attorney and as such should have taken necessary action to protect the property. See *Darnell Fassett v Philadelphia Gas Works, Id.*

8. Pages 17 & 23.

Again, Ms. Whisenant continues to speculate that the "unsafe conditions" could have existed prior to the purchase of the property by Ms. Mowery. Such speculation is unsubstantiated by any facts of record. The argument ignores the responsibility of the parties involved in this matter, including Ms. Whisenant with power of attorney, to protect Ms. Mowery's property. Such responsibility cannot under the UGI tariff be shifted to the utility by reason of speculation as to what might have happened.

9. Page 20.

Regarding a payment arrangement for the reconnection of service, payment arrangements involving meter tampering and theft of service are considered not to be appropriate. See *Darnell Fassett v. Philadelphia Gas Works, Id*, and *Patrick Kelly v Philadelphia Gas Works* at Docket No. C-2016-2530214. The responsibility for damage to the UGI equipment resides with the property owner and agents.

10. Conclusion

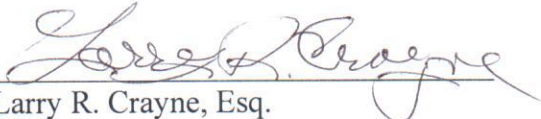
Ms. Whisenant makes a number of emotional arguments in her Conclusion that are neither relevant nor material to the issues raised in this Complaint. She also argues that UGI should submit a claim to their insurance company for the damage to the equipment. There is no lawful reason why UGI's insurance company should pay for Complainant's failure to protect the UGI equipment. The arguments have no basis in law or fact that are applicable to this proceeding.

### Conclusion

Complainants have failed to carry their burden to demonstrate that UGI violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided at the service address. The Commission should adopt Administrative Law Judge Joel H. Cheskis well-reasoned Initial Decision.

**Wherefore**, UGI requests that Complainant's Exceptions be denied and that the Commission adopt without modification the Initial Decision of Administrative Law Judge Joel H. Cheskis.

Respectfully submitted,  
UGI Utilities, Inc.

By:   
Larry R. Crayne, Esq.

## Certificate of Service

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Sec. 1.54 (b) (1) (relating to service by a participant).

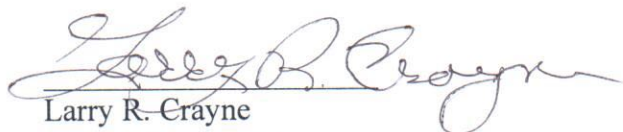
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Yvonne Whisenant  
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Ashley Mowery  
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Dated this 7<sup>th</sup> day of MAR, 2018



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Counsel for  
UGI Utilities, Inc.