

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

John E. Backman,
Complainant,

Complaint Docket
No. C-2018-3003230

VS.

UGI Central Penn Gas, Inc.,
Respondent.

Preliminary Objections

AND NOW comes Respondent, UGI Central Penn Gas, Inc., (UGI), pursuant to 52 *Pa. Code*, Section 5.101 (a) (1) and (4), and files the following Preliminary Objections

A. Pendency of a Prior Proceeding

1. 52 Pa. Code § 5.101(a)(6) provides that a party to a proceeding may preliminarily object for pendency of a prior proceeding.

2. Complainant, John E. Backman, a UGI customer, commenced the within action against UGI with the filing a formal complaint on June 22, 2018.

3. Complainant alleges, in pertinent part, that:

a. UGI is his natural gas supplier;

b. Natural gas is being produced from local shale and transported by pipeline to be shipped to Europe;

c. In the past natural gas was piped in from Texas to be sold to local consumers in the winter months, however, local distribution pipelines were upgraded and the cost of maintaining pipelines from Texas are no longer a concern;

d. Consumers should not have to foot bill of business entity's expansion;

e. Investors and European governments should pay distribution costs in sending natural gas out of the area; and

f. The cost of the natural gas Complainant consumed last month was \$132.80 and the distribution costs were \$166.29. Complainant, as a veteran, is on a fixed income and would like UGI to revisit the method of passing distribution costs to local customers.

4. In his requested relief, Complainant suggests, *inter alia*, the following: 1) requiring utilities concerned to “break out” the cost of local collection pipe-lines as well as to allocate the cost based upon the percentages of gas used locally as opposed to gas placed in pipe-lines to be sent out of the area; and 2) requiring the utilities to allocate the cost of the producing wells in the same manner.

5. In order for Complainant to prevail in his Complaint, 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).

6. Pursuant to Section 1301 of the Public Utility Code (Code) the Commission determined that the distribution rates of UGI were “just and reasonable” in UGI’s most recent distribution base rate proceeding at Docket No. R-2010-2214415 (Opinion and Order entered August 19, 2011).

7. Pursuant to Section 1318 of the Public Utility Code (Code), Code the Commission, at Docket No. R-2017-2602627 (Opinion and Order entered October 5, 2017) deemed the purchased gas costs rates applicable to Complainant “just and reasonable” after first determining that UGI is pursuing a least cost fuel procurement policy, consistent with the utility’s obligation to provide safe, adequate and reliable service to its customers. 66 Pa. C.S. §1318

8. In making such a determination, the Commission was required to make specific findings that: (1) The utility has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission; (2) The utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility’s ratepayers; (3) The utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies; (4) The utility has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy. (Emphasis added). 66 Pa. C. S. §1318.

9. Pursuant to Section 1307 et seq., the Commission, after annual audit and hearing, determines whether UGI’s natural gas distribution actual natural gas costs met the standards set forth in Section 1318.

10. At the time Complainant filed his formal complaint, the annual Section 1307 purchased gas cost proceeding for UGI was and is pending at Docket No. R-2018-3001631. At this time, the parties to the purchased gas proceeding have arrived at settlement and the presiding ALJ has suspended the procedural schedule to permit the parties to file a joint petition for settlement on August 10, 2018.

11. 52 Pa. Code §5.101(a)(6) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. Mazza v. Peco, 201 (WL 6763624 (2012)).

12. The purposes of the doctrine of *lis pendens* is to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. Id.

13. A party who asserts *lis pendens* as a defense bears the burden of meeting the three-pronged identity test specifically; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” Mazza supra; see also Hillgartner v. Port Authority of Allegheny Cty., 936 A.2d 131, 137 (Pa. Cmwlth. 2007).

14. Complainant in his formal complaint is primarily focused on the distribution costs and purchased gas costs of the natural gas provided him and seeks remedies that he alleges will reduce the costs.

15. While Mr. Backman is not a party to UGI’s purchased gas cost case at Docket No. R-2018-3001631, however, the Attorney General’s Office of Consumer Advocate is, and that office represents the interests of residential ratepayers such as Complainant.

16. The Commission has approved the Company’s purchased gas costs rates (subject to annual review) and its distribution rates. There is a presumption that approved tariffs and rates are just and reasonable and, therefore, a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission’s prior approval is no longer justified. *See, e.g., Pa. P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, et al., 2007 Pa. PUC LEXIS 45, at *165-68 (Order entered Sept. 28, 2007) (adopting the ALJ’s discussion on burden of proof).

17. Complainant’s formal complaint must be dismissed in light of the pendency of prior proceeding resolving the issues complained of.

Wherefore, UGI requests that the Complaint be dismissed as a matter of law.

B. Legal Insufficiency of Pleading

18. Paragraphs 1- 17 are incorporated herein by reference.

19. 52 Pa. Code § 5.101(a)(4) provides that a party to a proceeding may preliminarily object for legal insufficiency of a pleading.

20. This provision serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is

unnecessary. 66 Pa. C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n, 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pa. Pub. Util. Comm'n, 103 A.2d 502 (Pa. Super. 1954).

21. 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

22. The averments of this Complaint fail to allege a violation of the Public Utility Code, Commission regulations or the UGI filed and approved Tariff. See Anderson supra; also see, Ottaviano supra.

23. Since no factual issue pertinent to the resolution of this complaint exists, a hearing is unnecessary and Respondent is entitled to judgment as a matter of law. Granting UGI's motion for dismissal of this Complaint is appropriate in these circumstances.

Wherefore, UGI requests that the Complaint be dismissed as a matter of law.

Respectfully submitted,

UGI Central Penn Gas, Inc.



By: _____
Jorge M. Pereira, Esq.

Notice to Plead

To: John E. Backman:

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

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 29th day of July, 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

John E. Backman
140 North Williamson Rd.
Blossburg, PA 16912



Jorge Pereira
Counsel for UGI Penn Natural Gas, Inc.