

LARRY R. CRAYNE, PC
Attorney at Law

238 Johnston Road
Pittsburgh, PA 15241

lrcrayne@comcast.net

(412) 831-5462
(412) 425-4029

ELECTRONICALLY FILED

August 16, 2018

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

Re: Jennifer Potora v. UGI Penn Natural Gas, Inc.
Complaint Docket No. C-2018-3003485

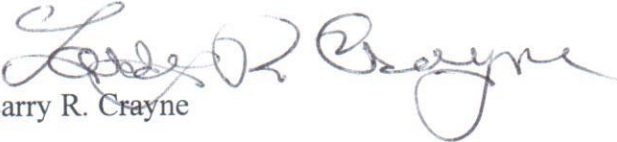
Dear Ms. Chiavetta:

Enclosed is an electronically filed copy of a Motion for Judgment on the Pleadings of UGI Penn Natural Gas, Inc. to Formal Complaint.

Because this matter involves an abuse of the regulatory process, please provide for this matter to be promptly assigned to an Administrative Law Judge in order that a final decision may be issued before the implementation of the 2018/2019 winter moratorium.

A copy of the document has been served on the Complainant.

Sincerely,


Larry R. Crayne

cc: Jennifer Potora
53 Academy Street
Plymouth, PA 18651

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

Jennifer Patora,
Complainant,

Complaint Docket
No. C-2018-3003485

VS.

UGI Penn Natural Gas, Inc.,
Respondent.

Motion for Judgment on the Pleadings

AND NOW comes Respondent, UGI Penn Natural Gas, Inc. (Penn Natural), pursuant to 52 Pa. Code, Sections 5.101 (a) (4) and 5.102 (a), and files the following Motion for Judgment on the Pleadings:

A. Legal Insufficiency of Pleading

1. Complainant in this proceeding has filed another complaint that is a substantively identical complaint when compared to an earlier complaint filed on or about February 21, 2018. A copy of relevant Paragraphs 4 and 5 of the earlier complaint at Docket No. C-2018-30000028 are attached hereto as **Exhibit A**.

2. The prior complaint was dismissed pursuant to Initial Decision of Administrative Law Judge Joel H. Cheskis dated June 27, 2018 after Complainant failed to appear for the scheduled hearing. No exceptions were filed by Complainant. In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Joel H. Cheskis dated June 27, 2018, became final without further Commission action by Order dated August 14, 2018.

3. Respondent Penn Natural respectfully petitions this Honorable Commission to dismiss this third formal complaint as being barred by the doctrine of *Res Judicata*. Complainant's allegations regarding a payment agreement and charges for natural gas service have already been adjudicated in the previous formal complaint referenced above and are consequently barred by *Res Judicata*. As stated by Judge Cheskis on page 7 of the initial decision: "By failing to appear and present any evidence in support of her complaint, Ms. Patora has failed to carry her burden. Thus, it is appropriate to dismiss the complaint with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).

4. For *Res Judicata* to be applicable, a party must demonstrate that the actions have four common elements: (1) identity of issues; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the capacity of the parties. *Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316,1317 (1983)

5. All four elements are met in this Complaint: (1) The issues are the same. The Complainant in this proceeding has requested a payment agreement and is disputing charges on her billings for natural gas service. The prior complaint also requested a payment agreement and alleged incorrect charges on her billings for natural gas service. (2) The cause of action is the same. Complainant in the earlier complaint requested a payment agreement and contested the charges for natural gas service. She contests the same charges in this Complaint. (3) The parties are the same; Complainant and Penn Natural. (4) Finally, the parties are acting in the same capacity in both complaints. Complainant is currently and was a customer of Penn Natural for natural gas utility service. Penn Natural is a natural gas distribution utility.

6. As stated on page 6 of the Initial Decision for Complainant's prior complaint, "Neither Ms. Potora nor anyone on behalf of Ms. Potora appeared at the date and time set for the hearing in her case despite notice of the hearing. In fact, Ms. Potora had indicated a few hours prior to the hearing that she was in the emergency room and that she would not be able to participate in the hearing. In most cases, such a situation would have warranted a continuance of the hearing. In this case, however, not only had Ms. Potora already been given one continuance, UGI presented significant evidence that Ms. Potora has requested multiple continuances in other formal and informal proceedings at the Commission. UGI surmised that Ms. Potora has been abusing the process to avoid termination. As a result, prehearing order #2 was issued after the hearing giving Ms. Potora an opportunity to demonstrate that she, in fact, was unable to participate in the hearing because she was in the hospital or had some other exigent circumstance. Ms. Potora was warned in the order granting her first continuance that a second continuance would be unlikely absent exigent circumstances. To date, Ms. Potora has not submitted evidence of her admission to the emergency room as an exigent circumstance, or any other evidence, sufficient to warrant a second continuance of her hearing." Initial Decision dated June 27, 2018 at Page 6.

7. Further, whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. 66 Pa. C.S. § 316. This section of the Public Utility Code precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *Jordan v. The United Telephone Company of Pennsylvania*, 1995 Pa. PUC LEXIS 158 (Initial Decision dated December 22, 1995).

8. The dilatory tactics employed by Complainant are an obvious attempt to delay regulatory action to require the payment of monthly bills for natural gas service. This additional duplicative Complaint is consistent with the demonstrated pattern of Complainant to file informal and formal complaints for the obvious purpose of delaying action by Penn Natural to force Complaint to pay monthly bills for natural gas service in full and on a timely basis. If Complainant is successful in delaying enforcement action before the implementation of the 2018/2019 winter moratorium on termination of service to residential customers, Complainant will have achieved almost another year of not having to pay bills for gas service. This is a clear

abuse of the regulatory process that contributes to the creation of a larger arrearage that may never be able to be collected from Complainant. Complainant should not be allowed to engage in such conduct to the detriment of customers who pay their bills on a regular basis.

Wherefore, Penn Natural is filing this Motion for Judgement on the Pleadings requesting this Complaint be promptly dismissed for the reason that the subject of this present Complaint has already been adjudicated and is barred by *Res Judicata*. 52 Pa. Code § 5.101(a)(4); *James S. Smith, Jr. v. PECO Energy Company* at Docket No. C-2010-2209072 (Commission Order entered September 22, 2011; *Brittany Vohrer v. PECO Energy Company* at Docket No. C-2012-2303471 (Commission Opinion and Order entered February 14, 2013); and *Shymar McBride v UGI Utilities, Inc.* at Docket No. C-2013-2391525 (Final Order entered March 20, 2014). Therefore, this Complaint should be summarily dismissed. Since no factual issue pertinent to the resolution of this case exists, a hearing is unnecessary. The Respondent is entitled to judgment as a matter of law. Granting the Penn Natural motion for dismissal of this Complaint is appropriate in these circumstances.

Notice to Plead

To: Jennifer Potora:

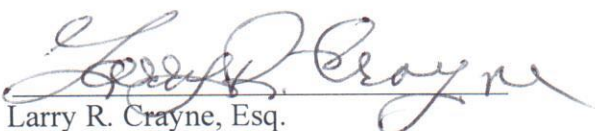
You are hereby notified to file a written response to the above motion for Judgment on the Pleadings within twenty (20) days from service hereof or a judgment may be entered against you. The response must be mailed to the Secretary of the Public Utility Commission:

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 the undersigned.

Larry R. Crayne, PC
Attorney at Law
238 Johnston Road
Pittsburgh, PA 15241

Respectfully submitted,
UGI Penn Natural Gas, Inc.

By: 
Larry R. Crayne, Esq.

ELECTRIC

WASTEWATER/SEWER

GAS

TELEPHONE/TELECOMMUNICATIONS (local, long distance)

WATER

MOTOR CARRIER (e.g. taxi, moving company, limousine)

STEAM HEAT

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

The utility is threatening to shut off my service or has already shut off my service.

I would like a payment agreement.

Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

Other (explain). I am disputing the amount of my bills since the meter has been moved to outside the house.

Exhibit A
Pg 1 of 2

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In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. **Requested Relief**

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

I want the bills to be checked out and a payment arrangement set up I also have applied for assistance which I have not gotten any confirmation back yet.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

Exhibit A
Pg 2 of 2

VERIFICATION

I, Amy Wynn, Senior Compliance Representative for UGI Utilities, Inc., hereby state that the facts set forth above are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. C. S., Section 4904 (relating to unsworn falsification to authorities).

Date: 8-16-2018

Amy K. Wynn
Amy Wynn
Senior Compliance Representative
UGI Utilities, Inc.

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).

Jennifer Potora
53 Academy Street
Plymouth, PA 18651

Dated this 16th day of Aug, 2018



Larry R. Crayne
238 Johnston Road
Pittsburgh, PA 15241

Counsel for
UGI Penn Natural Gas, Inc.