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ELECTRONICALLY FILED

February 4, 2020

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

**Re: Shawn Kinney v. UGI Utilities North Rate District**  
**Complaint Docket No. C-2020-3015985**

Dear Ms. Chiavetta:

Enclosed is an electronically filed copy of UGI Utilities, Inc.'s Preliminary Objections to Formal Complaint. A copy of the document has been served on the Complainant.

Sincerely,



Larry R. Crayne

cc: Shawn Kinney  
816 Chestnut Street  
Williamsport, PA 17701

**Commonwealth of Pennsylvania**

**Before the Pennsylvania Public Utility Commission**

In the Matter of:

Shawn Kinney,  
Complainant,

Complaint Docket  
No. C-2020-3015985

VS.

UGI Utilities Inc.,  
Respondent.

**Preliminary Objections**

**AND NOW** comes Respondent, UGI Utilities, Inc. (UGI), pursuant to *52 Pa. Code*, Sections 5.101 (a) (2) and (4), and files the following Preliminary Objections:

**Legal Insufficiency**

1. Complainant has filed a formal complaint with the Commission regarding the use of a "performance bond", a "labor wage claim" and a "GSA 1416 Payment Bond" for satisfaction of monthly billings for natural gas service. See Paragraph 5, Formal Complaint.

2. Apparently, Complainant is under some mistaken belief that he is not required to pay his monthly bills for natural gas service in United States currency and that the proffered form of payment he has proposed is legally sufficient and UGI is required to accept for payment of the monthly billings. Complainant is apparently offering payment using a "GSA 1416 Payment Bond". The GSA 1416 Payment Bond is a United States General Services Administration document intended for use by government contractors and contracting personnel for compliance with and management of financial security requirements in Federal government contracts. UGI is an investor-owned public utility. UGI's contract with Complainant is the filed tariff. Complainant is a private individual, not the United States government.

3. In regard to the relationship between UGI and Complainant, UGI is not a government contractor. Therefore, Complainant's use of such a bond to pay monthly billings for natural gas utility service is not appropriate. UGI has a right to be paid for service pursuant to the duly filed and approved tariff for gas service. UGI Tariff charges are expressed in United States dollars. In respect to Complainant, a Rate R, General Service - Residential customer, see Tariff Page No. 85 of the UGI filed tariff that references payment in United States dollars. There is no requirement that UGI accept alternative forms of payment other than legal currency of the United States government. "Payment for utility service cannot be made by reference to an obligation of the federal government when that obligation does not exist in law or fact. Responsibility for the payment of ... utility bills rests with the

Complainant.” See *Initial Decision*, page 14, in the matter of *Michelle Stailey v. UGI Utilities, Inc. (Gas Division)* and *Michelle Stailey v. Pennsylvania Electric Company* at Docket Nos. C-2019-3008847 and C-2019-3008867.

4. Complainant has been a UGI customer since May 3, 2019, has accumulated a current balance on his account of \$1,151.2 and has not paid a single bill since the inception of service. UGI may charge its customers in accordance with the lawful tariffed rates. *66 Pa. C. S., Section 1302*. "A utility tariff has the force and effect of law in Pennsylvania, and is binding upon the utility, its customers and the public" *66 Pa. C. S., Section 1303; DiSanto v Dauphin Consolidated Water Supply Company, 436 A.2d 197 (Pa. Super. 1981; Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa. Cmwlth. 1981)*. Complainant has no right to demand that UGI accept any other form of payment that is not specified in the filed tariff.

5. In *Coppedge v. PECO Energy Company*, F-2014-2406180, the Complainant attempted to pay utility billings using a fabricated "Electronic Funds Transfer" instrument. In an Opinion & Order entered January 29, 2015, the Commission concluded as follows: "Addressing Mr. Coppedge's contention that his "EFT" form of debt discharge is an acceptable negotiable instrument under the UCC, the ALJ found that interpreting negotiable instruments under the UCC is outside this Commission's jurisdiction, relying on, *inter alia, Coppedge v. PECO Energy Company*, Docket No. F-2009-2135893 (Order entered August 3, 2010). The ALJ also found:

'Several courts in other jurisdictions have found "bills of exchange purporting to be drawn against a trust account at the U.S. Treasury to be 'nothing more than a string of words that sound as though they belong in a legal document, but which, in reality, are incomprehensible, signifying nothing.'" *In Re: Denise Fachini*, 2012 Bankr. LEXIS 448 at 5 (Bankr. M.D. Ga. 2012) (and the cases cited therein).'

Also see *Gregory Kennedy v. PECO Energy Company*, Docket No. C-2015-2471718, where PECO refused to accept a promissory note as a negotiable instrument in payment for his outstanding electric service, citing the earlier case of *Haleema B. Alkhatib v. PECO Energy Company*, Docket No. C-2011-2242125 (Order entered January 12, 2012).

6. The language of the tariff is clear. A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Electric Utilities Corp. v. Pennsylvania Pub. Util. Comm'n, 912 A.2d 386 (Pa. Cmwlth. 2006)* Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. *66 Pa. C.S. §1302; 52 Pa. Code §53.25; Philadelphia Suburban Water Co. v. Pennsylvania Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002)*. Additionally, UGI's tariff is available for public inspection at the Company's website and at the Commission's website. Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v. Pennsylvania Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlth. 1995)*.

7. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. Philadelphia Suburban Water Co. v. Pennsylvania Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002). A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa. C.S. §1303. The method of payment is a tariff provision, having the force and effect of law. Requiring Complainant to pay charges in United States currency does not violate any provision of the Public Utility Code.

8. The Commission's regulation at 52 Pa.Code, Section 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa.Code § 5.101(a)(4) 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., Section 703(a); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n, 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n, 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n, 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n, 103 A.2d 502 (Pa. Super. 1954)

9. Therefore, Complainant fails to set forth any violation by UGI of the Public Utility Code, any order or regulation of the Commission or the UGI tariff. Accordingly, the Formal Complaint fails to state a claim within the Commission's statutory authority granted in Section 5.21(a) of the Commission's Rules and Section 701 of the Public Utility Code. Consequently, there are no genuine issues of material fact and UGI is entitled to judgment as a matter of law.

**Wherefore**, UGI moves that this Complaint be dismissed for legal insufficiency.

### **Scandalous and Impertinent Matter**

10. Complainant has demanded that UGI accept a performance bond in lieu of payment in United States currency of his monthly billings for natural gas utility service.

11. Complainant has no right to make such a demand. Such a demand is arbitrary and capricious. Complainant has no right to dictate a method of payment not specified by the Commission and the UGI Tariff. Such a demand without a right is impertinent to the level of being scandalous.

12. Therefore, Complainant's allegations and demands should be dismissed as scandalous and impertinent. Consequently, there are no genuine issues of material fact and UGI is entitled to judgment as a matter of law.

**Wherefore**, UGI moves that this Complaint be dismissed for demanding that UGI agree to a scandalous and impertinent demand that payment for gas utility service be accepted in the form of a bond that does not apply to UGI and would be a form of payment not specified in the filed and approved tariff.

## Notice to Plead

To: Shawn Kinney:

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:

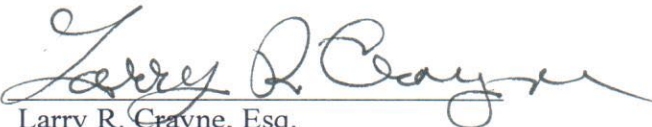
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

A copy of your response must also be mailed to:

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

Respectfully submitted,

UGI Utilities, Inc.

By:   
Larry R. Crayne, Esq.

## 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: Feb 4, 2020

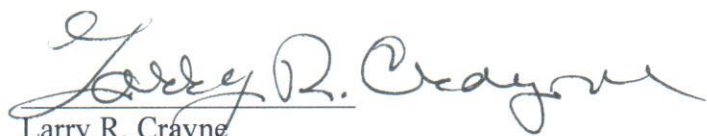
Amy K. Wynn  
Amy Wynn  
Senior Compliance Representative  
UGI Utilities, Inc.

## Certificate of Service

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

Shawn Kinney  
816 Chestnut Street  
Williamsport, PA 17701

Dated this 4<sup>th</sup> day of Feb, 2020

  
Larry R. Crayne  
238 Johnston Road  
Pittsburgh, PA 15241

Counsel for  
UGI Utilities, Inc.