

**Commonwealth of Pennsylvania  
Before the Pennsylvania Public Utility Commission**

In the Matter of:

Francene Tearpock-Martini  
Complainant

Docket No. C-2022-3033942

v.

UGI Utilities, Inc.  
Respondent

**REPLY TO UGI UTILITIES, INC. ON MOTION FOR JUDGMENT OF THE PLEADINGS**

This present case is about bullying, threats, intimidation and harassment by UGI Utilities Inc employees to property owner, Francene Tearpock-Martini, hereinafter referred to as "Complainant". These matters have not been litigated.

Without the opportunity of history of multiple trespass to this Complainant's property by UGI Utilities, Inc., mischaracterizations of information provided to the Court by UGI Utilities, Inc, inaccurate and false information provided to the court by UGI Utilities, Inc., no fact checks on information provided to the Court by UGI Utilities, Inc., one would wonder why UGI Utilities, Inc. and through their employees, would threaten, harass and do something like this to an individual who has resided at her property for 46 years and always maintained her property she worked for with pride and pleasure.

Things changed after the "guy wires" Trespass Complaint of 2021 and the employees now in 2022 are making threats to the Complainant and towards her property, threatening Complainant if she doesn't comply with their request for a ROW, they will take action which will cause further damage to her property with extensive maintenance costs, safety hazards and liability.

The current issues 2022 are not the same issues. Complainant is being treated differently since her trespass complaint. These are threats, bullying and harassment issues. The Complaint filed 07 02 2021 was about the UGI trespass of "guy wires" extending from UGI Utilities, Inc. onto Complainant's Property. Another complaint filed back in 2008 by Complainant noted in Respondent's Pleading had resulted in more serious damages with their trespass on a completely different section of her property and caused significant damage to her specimen tree, which trespass was remedied by the court in favor of Complainant and penalties were imposed. The specimen tree however has never fully recovered. UGI was also advised by PUC Investigator to have Complainant's own Arborist trim the trees due to the historical nature of the property and the quality of the trees on the property.

It should also be noted as "informational", that Complainant has a large property as shown in her maps and deeds and is separated by a small 'town road' called "Furnace Street". Furnace Street borders both parcels one on the north side of the street and the other parcel on the south side of the street. Both parcels run parallel to SR 11 South Main Street.

There are two Utility Poles that run along Complainant's property SR 11 ROW and one Utility Pole on the southwest side of Complainant's property, Furnace Street, in the middle of the sidewalk that prior to 1997 such pole was on the northwest side of Furnace Street. There are no other Utility Poles at the Complainant's property location. Three poles total run along Complainant's property.

UGI Utilities, Inc. is intending to move forward with their unsubstantiated, non-factual and misleading information provided to the Judge and are pleading that this Complaint be dismissed. This Complaint of 2022 is about Harassment and threats made and the Complainant is being treated differently following her Complaint filed in 2021 about the "guy wires" trespass. Following that Complaint decision, Complainant received further evidence from PENNDOT that UGI presented inaccurate ROW information to the Court in 2021 hearing and she immediately shared it with UGI Utilities. Harassment and threats followed.

Therefore, the Complainant Pleads herein to reject the arguments of the Utility Company Respondent and respectfully requests that the Hearing proceeds.

Complainant provided rationale in great detail on August 18, 2022 in filing her Response and Exceptions of Complainant to UGI Utilities motions and hereby requests they be made part of this Pleading.

**EXHIBIT A - RESPONSE AND EXCEPTIONS OF COMPLAINANT TO UGI UTILITIES, INC.**

## **1. INTRODUCTION**

1. Admit

2. Admit

3. Denied - Although the Company filed Answers to the 2021 Complaint; inaccurate information was provided to the Court by UGI Utilities, information that was never fact checked by UGI Utilities in that its anchor wires were, in fact, not installed within the boundaries of a municipal ROW although Complainant had provided correct information to the Court in the form of Surveys by Registered Land Surveyors, Survey Maps, Property Deed, and correspondence from PENNDOT ROW Administrator dated July 2, 2008, as to the ROW at Complainant's property at that location. Refer to Complainant's **EXHIBITS B - 1.** Property Deed, **2.** PENNDOT letter of 2008 pages 1 & 2; Survey Maps - **3.** Randy Howard PLS 2005 Subdivision Map; and **4.** Frank Grabowski, PLS Survey Map Lands 2008

Denied: July, 2021 Complaint was filed regarding "guy wires" that were installed within the Complainant's Landscaped property where UGI had no ROW. Complaint was not filed about any non-hazardous 2.5 feet aerial encroachment of line conductors. Complainant was not even aware of such encroachment. UGI Utilities is convoluting facts and misrepresenting 2021 Complaint.

4. Admit

5. Admit

6. Admit/Denied in Part - Admit anchor guy wires are "safety hazard" Complainant wanted them removed, a liability to Complainant's property. Complainant has responded to this in Exceptions' filing.

Denied - characterization of activity on private property which is 'posted no trespassing' is not accurately presented by UGI. From Complainant's kitchen location, two men were noticed running up and down hill property, trespassing on Complainant's property and were asked if either were Surveyors. They were not Surveyors and were asked to leave.

Denied - anchor wires are not aerial encroachment wires.

7. Denied - Hearing Complaint 2021 was not about aerial encroachment or moving a primary line. Hearing Complaint was about anchored "guy wires" trespass at her property. Complainant offered 3 options for resolving 'guy wires' trespass. UGI Utilities provided 2 options with alternative 1 (Subpart B). Options and Locations of poles were mischaracterized by UGI Utilities. Furthermore, there is no Pole #44009-36281 anywhere along the Complainant's property as being stated by UGI. Complainant is attaching as Exhibits, photographs of the 3 Utility poles - the only 3 Utility poles that exist along the Complainant's property and have been for very many years.

Utility Poles along Complainant's property are as follows: SR11 South Main Street southeast side pole #44016-36274; SR11 South Main Street northeast side pole #44024-36283; Furnace Street middle of sidewalk in front of Carriage House southwest pole 44025-36282. **EXHIBIT C** - Exceptions 4 and 5 in RESPONSE AND EXCEPTIONS OF COMPLAINANT TO UGI UTILITIES, INC. 08 18 22; **EXHIBIT D** - Photographs of 3 Utility Poles along Complainant's Property with Identifying Numbers.

8. Admit/Denied in Part - Admitted - The 'guy/anchor wires' should be removed to an appropriate location within the ROW.

Denied - The 'aerial encroachment' was not at issue in the Complainant's Formal Complaint filed 2021.

9. Admit - encourage parties to work together to implement removal of the wires.

10. Admit - Denied in part.

Admit/Denied in Part - Admit that "I am in Agreement with Honorable Judge Barnes that negotiations should be entertained"

Denied - "UGI admits that its facilities are encroaching the aerial property of the Complainant and thus there is no need to interpret the ROW at issue in this proceeding".

Denied - The proceeding Complaint was not about the aerial wires. The Complaint was about "guy wires" trespass without a ROW. UGI misleading location and issue not even proper location of property described to the Judge.

Denied - Options provided by UGI Utilities were misleading and had no focus on "guy wire" trespass as was outlined in Complaint of 2021. (Reference Respondent's Exhibit F - Complainant's **EXHIBIT E**. December 04, 2021 Complainant's Exceptions to Initial Decision - my Appeal)

11. Admit/Denied in Part - Admit aesthetics are concern as well as safety.

Denied - Respondent has provided no proof that Company facilities are properly located in public ROW.

Denied - Respondent reply Exhibit G - Alternative 3 Locations of poles and mischaracterization of poles cannot be considered as Option. Identification of Pole #44009-36281 does not even exist. (See Complainant's Reply Item 7 Denied with Photographs.)

12. Admit/Denied in Part - Admit - There is inconsequential 2.5 feet aerial encroachment. This is not a 'guy wire' nor was that part of 2021 Complaint.

Denied: Complainant filed Exceptions to Initial Decision as an Appeal on matters filed in prior Formal Complaint that was regarding "guy wire" trespass. Judge ruled the "guy wires" should be removed from her property". Judge was misled by UGI Utilities throughout the Hearing convoluting the "guy wires" trespass for what UGI was continuing to represent were "aerial wires" - a completely different matter not even in Complaint Filed. Complainant was not even aware of such until Harassment followed after Hearing and wire was pointed out to her by George Bokroch along with his threat.

Denied - Complainant has not rebuffed such efforts as remedial options and Respondent is mischaracterizing events. Complainant cooperated with all of that. Complainant has spent hours upon hours on the telephone with UGI Senior Engineer, Walter Grodzki, who promised to come to the property to meet with Complainant but insisted on telephone communications beforehand. Instead UGI Utilities employees arrived at Complainant's property without notice tearing apart her landscape and installing a contraption along her property without even proof of allowable access.

Denied - Two men found to be Employees of UGI were asked to leave Complainant's property when it was observed they were trespassing without prior notification with measuring tapes and were not Surveyors.

On separate occasion, July 12, 2022, Company employees (5) in number, violated her property rights but were not ordered off Complainant's property when they appeared without notice, closed off her property with (2) additional Safety road crew employees, and removed their "guy wires" installing another contraption along her sidewalk. Complainant has been threatened, bullied, intimidated, insulted on several specific occasions. (Refer to 2022 Formal Complaint specifics.)

13. Admit.

14. Admit/denied in Part - Admit - Company Trespassed at her property in 2008 and damaged her specimen tree.

Denied. Company was trespassing not tree trimming in 2008. The Complainant utilizes the service of Dincher Trees, Williamsport, Certified Arborist who does her tree trimming since the 1990's. Complainant was not notified of their trespass in 2008 and Complainant caught them in the act 12 feet onto her property in a bucket truck over her historic stone wall chopping at her tree. They severely damaged her specimen tree, it will never develop the same as God intended, UGI Utilities was charged penalties, and is to notify Complainant prior to any intended such activity. Other incidental issues at that Complaint Hearing were addressed regarding a pole moved from ROW across Furnace Street, Northwest side, to Southwest side. That is Pole #44025-36282. Also, a "wobbly pole with guy wires" was discovered behind Complainant's hill property while she was planting flowers and weeding. The Judge ordered that be remedied as well. (Refer to Respondent Motion to Judgment on the Pleadings Item 11, Exhibit G page 7 photograph) Note: UGI page # of photograph was "blurred" - photograph copy of damaged tree very clear.) **(COMPLAINANT'S EXHIBIT F)**

Denied: Complainant did not demand that any primary line be removed in her 2021 Complaint of "guy wires" trespass. She had no idea of such. Complainant asked that the "guy wires" be removed from her property which were trespassing. The "guy wires" might be described aerial in nature and anchored into her landscaping but complainant had no knowledge of any other encroachment than "guy wires". The "guy wires" were in clear view of her property and you would be correct to say affected the aesthetics of her landscaping efforts. Workers from the Utilities would run up and down her hill causing maintenance and safety issues of serious concern.

Complaint pertained to nothing other than the "guy wires" trespass which she complained about for many years with no answers from UGI. Complainant did her own research and through Deeds, Maps, Surveys and Title Searches it was concluded that UGI had no access to her property, UGI provided no information contrary to that except at the conclusion of more than a year in conversations with Walter Grodzki, UGI Utilities, he admitted that he had no proof of access. Therefore, Complaint was filed with PUC to remedy the matter.

Now, Complainant is being threatened and harassed as a result of the Complaint. She is being treated differently since she filed the 2021 Complaint.

Complainant presently is threatened by UGI Utilities that if not provided with a ROW, an aerial line will be moved back beneath her specimen tree, a completely different section of her property.

Complaint of 2021 never mentioned aerial line. Complaint was for trespass of "guy wires" anchored into her land with employees running up & down the landscaped hill.

15. Admit/Denied in Part. Admit- Complainant's undue hardship and threats are being experienced, 2022 Complaint.

Denied - Formal Complaint filed 2021 pertained to "guy wire" trespass. Complaint was not filed about any wire aerial encroachment.

Admit: UGI has removed the "guy wires" in July, 2022 from the Complainant's property which were Trespassing. UGI did not take Complainant under advisement on their chosen Option but selected on their own the most unfavorable of Options with various subparts which would cause undue

hardship to Complainant and her property. UGI, (5) employees in numbers, rushed to the Complainant's property without prior notification. Complainant made no fuss nor did Complainant interfere with the process, however, Complainant was intimidated and bullied by such process.

Admit - Since matter of the 2.5 feet of Aerial encroachment of UGI Utility wires was recognized, Complainant has been verbally threatened specifically by UGI George Bokroch that "if I did not provide them with a ROW, the aerial electric wires would be moved to my tree as they did when UGI Employee Tim Sutliff was here".

Admit - Walter Grodzki, Lead Engineer, promised to come to the Complainant's property for Discussion but first requested we talk by telephone, so Complainant agreed. We talked for two and one half hours. Walter Grodzki did not come to Complainant's property. Instead a decision was made on its Options without consideration for Complainant, and rushed its crew to Complainant's property tearing out the "guy wires" and reinstalling another contraption onto Complainant's sidewalk without any survey or proof of access.

Admit - Movement of these aerial wires present there for a very long time were ruled safe by UGI and Judge Barnes, (66 PA C.S. 1501) Conclusion of Law #13 noted in Judge Barnes' Initial Decision Order.

Admit - Movement would serve no purpose and is intended to bully Complainant into a ROW onto her property. There has been no Complaint filed on the electric aerial wires.

Admit - Judge Barnes ruled that the "guy wires should be removed from her property". Judge Barnes encouraged the parties to cause removal of the "guy wires" on Complainant's property and to resolve the dispute.

Present Complaint filed 2022, the Complainant is being threatened and harassed regarding movement of Utility Poles and wires and UGI is causing undue hardship upon the Complainant.

16. Admit/Denied in Part - Admitted that Complainant would not agree to any easement or ROW on her property.

Denied: Formal Complaint filed 2021 by Complainant was regarding 'guy wires' trespassing on Complainant's property. Complaint was not filed to remedy any aerial encroachment.

Admit - Judge ruled favorably in that matter "the guy wires should be removed from her property".

Denied - Formal complaint 2021 was not about "aerial encroachment".

Admit - Judge Ruled along with UGI that the aerial encroachment is not a safety hazard or Property liability concern but the 'guy wires" should be removed from her property. "By Order - Judge Elizabeth H. Barnes - November 16, 2021 - "That this matter be marked closed."

17. Denied. It is preposterous to suggest Complainant is at fault for protecting her property from trespass from the Utility particularly after previous experience with UGI Utilities and prior

substantial damage caused to her property from the Utility - i.e. specimen tree. It is UGI Utilities who has intertwined facts of the matter. Prior claim of 2021 was for trespass of "guy wires" not for Utility Poles or aerial encroachment of line conductors.

Complainant has not refused UGI to remediate anything. Complainant must be allowed to present the facts as they provide rationale for such harassment and threats taking place by UGI and UGI employees creating the necessity to file a Formal Complaint with the PUC, 2022.

18. Denied. Complainant is being threatened, harassed and bullied. Complainant must be allowed to present the history and facts as they provide rationale for such harassment actions taking place by UGI and UGI employees. If facts and history are reviewed and if there is an element of doubt that incorrect, misleading and inaccurate information was presented to the Court by UGI Utilities, it would be in the jurisdiction of the Court to remedy such.

UGI Utilities fabricated information, provided inaccurate and unsubstantiated information, mischaracterized issues, locations and facts but got caught. and now UGI Utilities, Inc. is harassing Complainant, threatening Complainant so as to violate her property - again.

19. Admit - 60 feet ROW is the correct ROW not 66 feet as stated by UGI. Complainant provided correct ROW documentation to support her 2021 Complaint about the "guy wires" trespass.

ROW was the factor in previous Complaint 2021 regarding "guy wires" trespassing. Aerial encroachment was never a factor in Complaint filed in 2021. UGI has convoluted the makeup of the Options and phases of such Options.

Present Complaint is about UGI choosing the Option they concocted and is most unfavorable to the Complainant, in order to force a ROW upon her property. There was no consultation with the Complainant - there were threats to the Complainant. UGI got caught with their scheme to take care of another of their pre-existing problems since they don't pay attention to details. UGI did not fact check their information. Now they are using threats and bullying to correct problems they created.

20. Denied. Complaint of Harassment is not to dispute ALJ Barnes' Decision or Commission Order from 2021 Complaint. Harassment and threats are taking place by UGI and its employees.

21. Admit/Denied in Part. Admitted - Company filed its Answer and New Matter to the 2022 Complaint denying harassment/threat claim. UGI uses the terminology of "aerial guy wires" as a ruse. "Guy wires" are installed into the ground but extend above the ground. They are a hazard and a liability to one's property. They are also an eyesore. Complainant's property is Historic and is an asset to our Community. Complainant has made many sacrifices for the upkeep of such property.

Admit - Complainant would not provide anyone a ROW onto her property. It is on the National Historic Register.

Denied - Contacts with Complainant by UGI employees were not professional and cordial nor in an effort to try and work with the Complainant. Complainant was met with threats, harassment and bullying. UGI Utilities twists words and provides misleading information.

"Guy wires" and "non hazardous aerial encroachment of line conductors" are two separate and unrelated matters.

Threats by George Bokroch were very specific. When George Bokroch pointed out the aerial wire to me he was very specific. He stated if I did not provide UGI with a ROW, that aerial electric wire would be moved to my tree as they did when UGI Employee Tim Sutliff was here. We stood right at that location on the curb of my property when that threat was made. I told Mr. Bokroch that it was a threat. He repeated it and I repeated that it was a threat again.

Threats and condescending remarks got worse over time. Mr. Bokroch started talking to me in a very condescending manner. I asked him to stop talking to me in a condescending manner. On another occasion George Bokroch came to my property with Brian Devine, another UGI employee. Mr. Bokroch again began talking to me in a condescending manner. I asked him to stop talking to me in that manner and tone. It seemed to become contagious as then Brian Devine addressed me in the same manner and attitude and which I asked him to stop. As I recall that is when discussions ended.

22. Admitted/Denied in Part. Complainant, pro se, made every attempt to follow procedural instructions as well as e-filing procedures provided to her through the PUC Commission. Complainant admits she even needed to hire a Computer company, to set her up with e-filing with PUC. It was not even a word in her vocabulary when she retired quite a few years ago. Complainant also took measures and verified via phone calls to the PUC Commission that Attorney Timothy K. McHugh was registered through e-filing with the PUC. Complainant sincerely apologizes for any misunderstanding of such information or inconvenience it caused to Attorney McHugh or the Commission. It was not intentional by any means. Complainant will also in all subsequent actions, provide a courtesy emailing to Attorney Timothy K. McHugh. We all have a job to do and what we do is very important.

23. Admitt/Denied in Part. Admitted - Complainant is troubled with the position that she can't go back and relitigate a case based on false information, unsubstantiated information; mischaracterized information; information that was misrepresented to Court under oath by UGI Utilities; yet UGI Utilities, Inc. can move forward on such incorrect information and further violate rights of Complainant and cause her additional hardship.

Denied - Complainant never complained nor did she file a Complaint about any "non-hazardous aerial encroachment of line conductors" at her property. Complainant filed a Complaint about "guy wire" trespass at her property and violating her property with its "guy wires". UGI Utilities is mischaracterizing the Complaint.

Admit - This 2022 Complaint is about Harassment. This Complaint is about threats and intimidation by employees of UGI Utilities. This Complaint is about being treated differently since she filed Complaint 2021 with the PUC Commission on UGI Utilities trespass of their "guy wires", an issue that continued for years without attention by UGI Utilities. This Complaint is about UGI Utilities concocted method to gain ROW access to complainant's property through force which is unreasonable and inappropriate.

## **11. ARGUMENT**

### **A. Applicable Legal Standards**

24. Admit.

25. Admit.

26. Admit.

### **B. Dismissal Based on Section 316 of the PUC Code and Applicable Doctrines of Collateral Estoppel and Res Judicata**

27. Deny - UGI is not entitled to Judgment based on argument presented. The 2022 Complaint is not the same. The 2021 Complaint was about trespass of "guy wires" at her property. 2022 Complaint is about Harassment. The Complainant is being treated differently and is being harassed, threatened and intimidated for a ROW; otherwise 'aerial wires' will be moved back to Complainant's specimen tree to cause once again financial hardship and potential additional damage to her property which was caused by UGI Utilities in 2008 and only since 2019, financial hardship was remedied. There was no Complaint filed about aerial encroachment.

It is apparent UGI Utilities is skilled in convoluting the issues when pressed through Formal Complaint, then include add-ons - issues separate from original Complaint. Information provided by UGI Utilities was not fact checked, was incorrect, and was mischaracterized. It is apparent to Complainant based on these experiences with UGI, if UGI Utilities employees paid closer attention to their alignment and location of poles and wires, these Complaints would be reduced or be non-existent. This practice results in abuse to other Parties as well as their own best interests. This Complaint is not about "aesthetics", although aesthetics is important. This Complaint is about further consequential damage to Complainant's property. This complaint is by way of verbal threats and harassment which are causing Complainant much stress and worry, the UGI Utilities want to gain access to Complainant's property by force to solve a problem they created.

28. Admit/Deny in Part. Admit - Party is precluded from relitigating prior order if prima facie evidence of facts conclusive upon all parties affected, unless set aside, annulled or modified on judicial review and if facts are the same. Facts are not the same. Complainant Party is being adversely affected.

Admit - Complainant is troubled with the position that she cannot go back and relitigate a Case finalized based on false unsubstantiated information; information that was incorrect and was misrepresented to Court under oath by UGI.

Complainant is further troubled that UGI Utilities can move forward on this incorrect information and further violate rights of Complainant and cause her additional hardship. With all the

resources available to UGI they never even bothered to fact check despite all the years Complainant asked for some type of proof of access as they trespassed and violated her property with its 'guy wires'. To this day, UGI has not even provided accurate Utility Pole numbers that adjoin the Complainant's Property.

29. Deny - that the issues and claims raised in 2022 Complaint and herein - are the same as or identical to issues raised in 2021 Complaint. Doctrines of collateral estoppel and res judicate should not apply here.

30. Admit/Deny in Part: Admit that conditions must be identical to the one presented In current action. Conditions are not the same nor identical to current action. Company has mischaracterized conditions, issues and facts. Furthermore, 2022 Complaint concerns harassment, threats, intimidation and Party/Complainant is being treated differently as a result of previous Complaint for trespass of 'guy wires' installed on her property by UGI employees and employees of subsidiaries renting poles from UGI running up and down her landscape adjusting and increasing "guy wires" load.

31. Admit/Deny in Part: Admit - 2021 Complaint - UGI had no ROW for anchor/"guy wires" at property and no consent from Complainant and are safety hazard. UGI has provided no proof of ROW to anchor/"guy wires". Complaint demanded that UGI remove anchor wires at property.

Deny - Aerial encroachment was not at issue in 2021 Complaint.

Admit - UGI remediation options are unacceptable; options were misrepresented to the Court. Company provided Pole # does not even exist at property location; Company provided mischaracterization/location of Utility poles along Complainant's Property for options and subpart of options.

Admit - Aesthetics are concern; damage to specimen tree is financial hardship and Increased maintenance costs are serious concern to Complainant especially now after such matters had previously been resolved about the tree and we moved on. Furthermore, aerial encroachment which was incidental to the "guy wire" trespass Complaint issue, was put to rest by Judge Barnes in her decision and in agreement with UGI Utilities that the small encroachment of the 2.5-foot aerial encroachment was not even a safety hazard within the meaning of the Public Utility Code, and being there many years but Judge Barnes agreed with Complainant that the "guy wires" should be removed from her property and Parties should get together and work things out. (Initial Decision Honorable Judge Barnes, November 16, 2021) (Respondent's Exhibit E.**COMPLAINANT'S EXHIBIT G**)

32. Admit/Deny in Part - Admit - There was no Appeal filed. Complainant filed 'Exceptions' to Decision. Commission issued judgment on issues raised in 2021 Formal Complaint regarding "guy wires" trespass.

Deny - There was no Complaint filed in 2021 about harassment or threats. There was no Complaint filed in 2021 on aerial encroachment.

Deny - Complainant did provide proof of ROW with 2 surveys by Registered Land Surveyors on correct ROW at Hearing. Complainant also provided letter of 2008 (2 ps) during Hearing 2021 from PENNDOT ROW Administer stating ROW was 60 feet at her property. (Refer to Complainant's Exhibit B)

33. Admit.

34. Admit/Deny in Part. Admit - Complainant did not file an Appeal on issues not Defined in her 2021 Formal Complaint. - Complainant instead filed Exceptions to Initial Decision. (Refer to Complainant's Exhibit E) Complainant admits that the previous Formal Complaint was not fairly litigated. UGI mischaracterized the Complaint from trespass of "guy wires" to "aerial encroachment trespass" and proceeded to convolute the entire exchange.

UGI did not fact check their own information despite Complainant's accurate information presented. UGI Utilities instead contradicted Complainant's presented factual evidence with mischaracterizations. Furthermore, UGI Utilities presented misleading incorrect information when correct information was readily accessible to them but instead convoluted events and facts to the Court for their own advantage.

35. Deny - It is denied that Conditions of res judicata have been met. (1) Identity of issues are not the same. Identity of Issues of 2021 Complaint were involving trespass of "guy wires" on Complainant's landscaped hill Property location.

Identity of Issues in 2022 involve Harassment, threats and intimidation by Employees of UGI Utilities with relocation of aerial wires to different location of property where it previously caused damages to specimen tree.

(2) Cause of action - in order to obtain a ROW to Complainant's property or move unrelated "aerial wires" to unrelated area and location of Complainant's property and cause a hardship to Complainant and Complainant's property, Complainant is being threatened and harassed

(3) Identity of persons and parties to the action vary by levels of employment. In 2021 Complaint was based primarily upon UGI Engineering, specifically Walter Grodzki, Senior Engineer in charge of anchor wire placement. Many hours of discussions were held for more than a year with documented email threads. Disregard for numerous requests for proof of access with "guy wires" to Complainant's property causing safety and maintenance issues with Mr. Grodzki admitting he had no proof of access and no removal of "guy wires". This resulted in Formal Complaint being filed. Formal Complaint Filed, 2022- Specific to verbal threats made by Senior Engineer Tech George Bokroch.

(4) Identity of quality and capacity of the Parties vary by levels of employment of each Party in the Complaint.

36. Deny - Identify of the issues 2021 and 2022 Formal Complaints are not identical. They are not even remotely similar.

UGI continues to mischaracterize events. 2021 Complaint was for "guy wire" trespass at hill location. 2022 is for Harassment and Threats to Complainant.

Although UGI came unannounced in 2022 to Complainant's property to remove its "guy wires", they reinstalled a different contraption onto Complainant's sidewalk which UGI Utilities chose Option in haste and without consultation with Complainant property owner. UGI Utilities employees rushed to remove the "guy wires" at Complainant's hill property location after Complainant received further confirmation of PENNDOT ROW and shared such factual documents immediately with UGI Engineering.

At Hearing for 2021 Complaint, it is worthy to note with all the resources available to UGI Engineering, they never bothered to fact check their ROW but instead provided under Oath to the Court their false documents of a 66 feet ROW and disparaged Complainant's correct documents obtained from two separate Registered Land Surveyors of 60 feet. Surveys plus a letter from PENNDOT that Complainant presented dated 2008 was removed from evidence as "irrelevant". These Surveyors are licensed to conduct land surveys to measure and define real property and its boundaries. PENNDOT Right of Way Administer knows correct ROW boundaries.

Threat - George Bokroch, Senior Tech informed the Complainant that they would be putting their high voltage wire back over to the specimen tree area of Complainant's property in Phase Two of the Option UGI chose without consultation with Complainant - "unless I give them a ROW". Mr. Bokroch informed Complainant that they were doing what was "ordered by the Judge".

37. Deny. Causes of action are not identical in 2021 and 2022 Complaints. Complaints are trespass in 2021 Complaint. 2022 Complaint is for harassment and threats and mischaracterization of facts and evidence to make a decision.

38. Admit/Deny in Part. The Parties Complainant Francene Tearpock-Martini and UGI Utilities, Inc. and their employees. Employees named in Complaints are not identical. Their job classifications and description of their job responsibilities are not the same.

39 Deny - UGI placement of their wires was to their own benefit when they selected the location of placement. It is only now that they want to change the location of their selected placement in an effort to force a ROW and harass the Complainant because she filed a Complaint to have their "guy wires" removed from her property. The "guy wires" caused the complainant maintenance fees with employees running up and down her hill, along with parking their vehicles onto her property. The "guy wires" were a liability issue. Company never provided Complainant any Certificate of Liability Insurance for use of her land and when Complainant asked for proof of access with the "guy wires" she was told they had no proof by Mr. Grodzski after asking for something for more than one year. During the Hearing, however, testimony changed provided by UGI Utilities employees that they had a ROW of 66 feet which was never fact checked. It was 60 feet as Complainant provided with proof.

40. Admit/Deny in Part - Claim and issues are not the same. Evidence from UGI Utilities was incorrect, never fact checked, and mischaracterized to the Court and to the Complainant. The evidence Complainant provided was accurate and confirmed to be correct. UGI is now attempting to cause the Complainant undue hardship moving wires and poles around in the obvious form of threats and harassment in a failed attempt to obtain a ROW to Complainant's property by force. Prior Formal

Complaint of 2021 never suggested threats and harassment. The Complaint was specific for "guy wires" trespass on her property.

What has been clear throughout this entire process is that UGI is skilled at convoluting issues and misrepresentation of facts.

The circumstances with the "guy wires" 2021 Complaint, Judge Barnes ruled the "guy wires" trespass should be removed from her property. Judge Barnes encouraged the parties to work together. Instead and in haste UGI selected an Option without respect to Complainant.

When UGI Utilities brought up the matter of aerial encroachment, Judge Barnes ruled separately that the "inadvertent" 2.5 aerial encroachment has been there a very long time and is not a safety hazard or a property concern.

There is no justification for ROW or movement of lines to cause damage to the property Owner at different location of her property, i.e. rare specimen tree on her Historic property. Evidence shows UGI Utilities approach to gain access of Complainant's property is by force with threats and harassment.

41. Admit/Deny in Part - 2022 Complaint should not be rejected nor dismissed. UGI Utilities provides inaccurate information and inserts add on irrelevant data to Complaints to confuse issues. Even in the submission of most recent filing October 17, 2022, Motion for Judgment on the Pleadings, false utility pole ID numbers were provided. Complainant knows the history of the property and has worked at it for 46 years.

There are only (3) utility poles along the Complainant's entire 300+ feet of frontage to her property. These utility poles are correctly identified in Complainant's Item 7 within this filing along with photographs of the pole ID numbers as Exhibits.

The Formal Complaint filed in 2021 was for trespass of "guy wires" on Complainant's property. The current 2022 Complaint is about Harassment and threats made to Complainant subsequent to her 2021 Complaint.

UGI Utilities does not fact check and expresses no correct concept of the ROW to Complainant's property. UGI expresses no consistent process of their installation of poles and 'guy wires' or even location of poles. When a Complaint is filed, they mischaracterize the facts and throw in unsubstantiated data to confuse the process. Complainant has had two prior hearings before the PUC and there appears to be a pattern. UGI convolutes facts and misrepresents the issues.

UGI Utilities has provided no proof of access to her property or even access to where they relocated their "guy wires". UGI provided nonfactual information to the Court under oath. With all its resources, they failed to confirm or verify. Decisions were made with nonfactual information that could potentially cause damage to the Complainant and her rare specimen tree. Threats have not been taken lightly. Complainant is in constant fear, worry and anxiety because of the threats and actions taken by UGI Utilities, Inc.

UGI brought up and the Judge put to rest "aerial wires" which are safe located at another location of the property from the "guy wire" trespass. This other "inadvertent" issue came to light and now UGI plan is to create a hardship for the Complainant at a whole other location of her property that had been remedied - finally. UGI Utilities is attempting to obtain a ROW to Complainant's historic property by force using threats.

Significant research has been done on the property by experts and scholars specializing in such and the property is on the National Historic Register. Complainant is very mindful of the opportunity she has had and to be the owner of such property. Complainant has made many sacrifices for the place she loves and protects. It's a treasure.

For the reasons outlined herein, Complainant pleads for proceedings to continue without rejection and without dismissal.

Respectfully Submitted,



Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, Pennsylvania 18655  
(570) 542-2346  
Email: ftm@epix.net

DATE: November 05, 2022

**Commonwealth of Pennsylvania  
Before the Pennsylvania Public Utility Commission**

In the Matter of:

Francene Tearpock-Martini  
Complainant

Docket No. C-2022-3033942

v.

UGI Utilities, Inc.  
Respondent

**CERTIFICATE OF SERVICE**

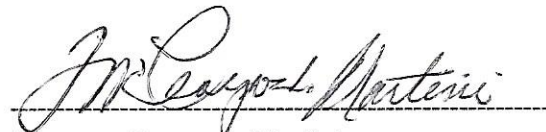
I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter upon the parties listed below, in accordance with the requirements of 52 PA Code relating to service by a Participant.

**VIA ELECTRONIC MAIL**

Timothy K. McHugh (I.D. 317906)  
UGI Corporation  
460 N. Gulph Road  
King of Prussia PA 19406  
Tel. (610) 768-3639

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

Commission Office of Special Assistants (OSA)  
RA-OSA@pa.gov



Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, Pennsylvania 18655  
Tel. (570) 542-2346

DATE: November 05, 2022

C-2022-3033942 Francene Tearpock-Martini v UGI Utilities Inc.

**EXHIBIT - A**

**Response & Exceptions of Complaint to UGI UTILITIES, INC.**

**Commonwealth of Pennsylvania  
Before the Pennsylvania Public Utility Commission**

In the Matter of:

Francene Tearpock-Martini  
Complainant

Docket No. C-2022-3033942

v.

UGI Utilities, Inc.  
Respondent

**RESPONSE AND EXCEPTIONS OF COMPLAINANT TO UGI UTILITIES, INC.**

**AND NOW** Complainant Francene Tearpock-Martini, in support of her complaint, avers as follows:

1. No exception
2. No exception
3. No exception
- 4.- 5. Exceptions

The location of the Utility poles along Complainant's property are as follows and have been mischaracterized by UGI Utilities. There is a Utility Pole along SR 11 ROW east side of my property (near my historic stone wall). Parallel to that pole, there is also another Utility pole also east side of my property along SR 11 ROW (near my landscaped hill). My property is divided by a small town-road called Furnace Street. It is at the location of my landscaped hill that the 'guy wires' were placed in trespass both at the land level where they connected deep into the ground and aerial above that hill coming from that Utility Pole east side of my property.

My word is truth and I know my property and what I own. I have proven that the information I provided in two previous hearings through surveys by Certified Land Surveyors, two of them, and my ROW information has been further supported most recently by PENNDOT.

Insults and mischaracterizations of me will not change facts of my ownership and my rights and only causes hard feelings. I am being threatened and harassed or I would not have provided these in my filings. It will get UGI Utilities no benefit to say that I am "fabricating" such because that would not be true.

UGI Utilities provided me with two options to remedy this problem - not three. I provided UGI Utilities with three options safe and cost effective. The ruling by Honorable Judge Barnes was that we get together to resolve our differences. When I received further documentation of my Rights through correspondence with PENNDOT ROW Management, I immediately provided it to UGI Utilities. I spoke

with their lead Engineer Walter Grodzki when he phoned me and we spent another 2 and 1/2 hours on the telephone. Even though I asked him to come to my property personally to go over things, he suggested that we first have the telephone discussion, which we did, but he never came. Instead almost immediately, UGI Utilities came to my property with 5 trucks, 5 men and 2 additional road safety crew members, blocked traffic, had their crew remove the 'guy wires' from the land which was outlined in one of their two Options part A, leaving the overhead aerial trespass remaining, part B, and giving me little recourse but threatening me that if I do not give them a ROW, they will return the overhead wire to the Utility pole parallel to the one presently, both poles are on the east side of SR 11 east of my property which would ultimately run up to the Southwest Pole along my property on Furnace Street - such wire running over the sidewalk area through my specimen tree which is about 40 feet in height as I planted it 45 years ago when I moved here. It is always pruned by a Certified Arborist. By history of records through PUC, you will see that UGI Utilities violated that some years ago and had their bucket truck and employees' trespass 12 feet into my property damaging my specimen tree which has never completely recovered from such injury. They did pay penalties for their trespass as ordered by the Honorable PUC Judge Miello at that time - but the fact remains, they ruined the appearance of my beautiful tree shaping it like a chair, at my beautiful historic property. They came without notice and did that damage.

It seems this is UGI Utilities way of doing things since currently they did the similar thing and came to my property in haste after I sent George Bokrosh and Walter Grodzki by email the additional proof from PENNDOT on their ROW. They rushed in an attempt so to railroad me into providing them with a ROW. George Bokroch of UGI threatened me if such ROW was not provided, they would move the overhead wire back to my specimen tree location.

Attorney Crane for UGI at the previous Hearing was determined to attempt to humiliate me that the photography I provided at Hearing was to flaunt my property but my intention with the photography was specific to providing a visual of the locations of the poles around my property for Exhibits and Information on the alignment of the poles since my property is unique and being surrounded by three streets on an escarpment.

For some historical information, it was the property of the Founder of our town who at one time owned everything and plotted out the town and selected 56 South Main Street for his Homestead. I do not have to flaunt my property. It speaks for itself. I had the opportunity to purchase it in 1977. I restored it and was honored by the Luzerne County Historical Society for restoration and preservation in 2002, and ultimately it was nominated and placed on the National Historic Registry in 2009.

Now in this "Answer of Respondent, UGI Utilities, Inc." by their Corporate Attorney Timothy K. McHugh, Complainant, Francene Tearpock-Martini, will proceed to address each issue individually as presented with 'Exceptions'. Please allow me to be clear that I never in any way mislead anyone into thinking they would get a ROW from me onto my property. I never misrepresented anything. The evidence I provided was thoroughly researched and accurate. UGI left me with a bad situation and little choice by taking it upon themselves to pick their Option which would cause my property the most harm. By decision of Honorable Judge Barnes, her recommendation was to come to some agreement between the Parties - work things out. When I received additional proof from PENNDOT of their ROW I immediately emailed and phoned UGI Utilities with this important information. I provided it to Walter Grodzki and George Bockroch. Instead of working things out, they rushed here to do Option Part A leaving me with threats for Part B. The threats were specific - "ROW or the electric line will return to your specimen tree".

UGI should have known what their ROW was before the Hearing. Every detail should have been fact checked by UGI Engineer, Mr. Grodzki and Senior Tech Mr. Bokroch, before providing incorrect unverified information to the Judge.

All through the years I have contacted UGI Utilities and complained to them about the damages to my property caused by trucks parking on my property, employees of UGI and subsidiaries who rent UGI Utility poles, running up and down my landscaped hill, the safety issues to my property with their 'guy wires' on my property. I asked over and over again to provide proof of any rights they had, and they provided no proof. Eventually during so many time-consuming discussions with UGI Walter Grodzki, he admitted he had no proof. Then at the Hearing, Walter Grodzki and George Bokroch testified providing false information about their ROW and incorrect pole site locations.

If ever there was a case that should be reopened by whatever authority the PUC has to do so, it should be this case. The incorrect information UGI provided at Hearing through Walter Grodzki and George Bokroch, Engineering personnel, should have been fact-checked and verified. Nevertheless, UGI Utilities, Inc. have jumped the gun and are now trying to railroad me into some ROW that will not happen to my historic property. UGI Utilities are causing further stress and hardship to me, threats to further damage my tree, cost and expenses for maintenance, concern and worry, continue to harass me and blame me for the mistakes they are making and have made.

The biggest mistake UGI made back in the 90's was when they moved one of their Utility Poles from the northwest side of Furnace Street to the southwest side of Furnace Street thereby causing all these subsequent problems that continue to the present time due to incorrect placement of that pole from one side of Furnace Street to the other side - north to south side. They threatened me then too. UGI Tim Sutliff told me to pay them \$10,000 and they would move the pole back across Furnace Street, yet at that PUC Hearing he couldn't remember where the pole was initially on Furnace Street. UGI only knew it was on Furnace Street. Judge Miello asked that question and that was how it was answered. I lived at my property here since 1977. I knew where the pole was and I even have photographs of it.

Attorney Crane for UGI accused me of flaunting my property with photographs at the prior PUC Hearing. I provided photographs for evidence and Exhibits, not to flaunt my property. My property speaks for itself.

For your further understanding, there is no Utility pole at the "northeast" side of "Furnace" Street. - let us be clear on that. There is a pole on "SR 11" northeast side" of property. There is a Pole situated on the "southwest" side of "Furnace" Street which is the pole they moved to that location from the "northwest" side to the "southwest side of "Furnace" Street placed into the middle of the sidewalk there in front of my Carriage House. That was done back in the 90's that I protested. (See comment above noting the movement of the pole.)

What is important at the present time for your clear understanding is that UGI overhead electric wire that ran from the "east" side pole at my property "SR 11" location near the stone wall described earlier ran up the sidewalk to the "southwest" location of "Furnace" Street and is what caused the tree issue back in the 90's with continued problems and hardship for Complainant until 2019 when UGI finally moved their wires away from my tree to the other east side pole parallel on "SR11" as described earlier, at the hill area where their guy wires have been trespassing on my property. Now, you are forcing me to accept an Option, part B for more hardship again after you finally remedied the problem you caused me for so many years. Needless to say, this is very stressful and threatening to me and my property.

6. No exception

7. Exception

(b) Complainant has spoken to Utility Company representatives about their harassment and threats. Complainant has asked George Bokroch on two separate occasions not talk to me in a condescending manner. Brian Devine, Engineering Tech was present on the one occasion when I asked Mr. Bokroch not to talk to me in a condescending manner. Complainant has also asked Mr. Bokroch to stop threatening me that he will put the wires back to my tree. It causes me much worry and stress.

Mr. Bokroch had also brought up the Hearing about the tree to me and specifically mentioned Tim Sutliff's name. Oddly Mr. Sutliff is deceased for many years. It was then during that specific conversation standing along my property by Furnace Street that I came to realize Mr. Bokroch had testified at that Hearing back in the 90's regarding my tree along with Tim Sutliff and I knew he was threatening me about moving the wires. I told him he was threatening me and to stop it.

#### **NEW MATTER RESPONSE**

8. Complainant incorporates by references responses contained in paragraphs 1 through 7 Responses and Exceptions above fully set forth at length.

9. No Exception

10. No Exception

11. Exception

Complainant notified UGI Utilities over a period of many years about their trespass and she was continuously told they had a right to be on her property. Dating as far back to employee Joe Rymar, Complainant was told UGI had a right to my property. My surveys said otherwise. When asked for proof UGI provided no proof. Prior to PUC Complaint, Engineer Grodzki did finally admit to Complainant that he had "no proof" although at Hearing, testimony was provided by UGI Utilities that they had proof of a ROW of 66 feet which was not correct.

UGI Utilities employees and their subsidiaries who rented space on their Utility poles continued to run up and down on Complainant's landscaped hill. They continued to park trucks on her property. Their trespass was not "inadvertent", it was a safety hazard. It required constant maintenance and was a liability to the Complainant. Complainant provided 3 Options to UGI Utilities to remedy the problem to no avail. Only after the Complaint was filed with the PUC did they begin to pursue possible options for removal of their encroachment.

12. No Exception

13. Exceptions

Although proof was provided by Complainant that UGI ROW was 60 feet, not 66 feet, UGI Utilities, Inc. testified Complainant's surveys were "irrelevant" and mischaracterized their own information as being accurate. UGI Utilities also mischaracterized the location of their poles and the consequences of their

Options which would be a hardship to me. Honorable Judge Barnes encouraged that the Parties work together to implement the removal of the "aerial" guy wires, and agreed because of UGI incorrect information provided that their Options Part A Part B seemed reasonable thus leaving Complainant with subsequent threats, harassment, and bullying by UGI personnel as they continue to trespass misrepresenting the Judge's order stating that they are "doing what the Judge ordered". Honorable Judge Barnes clearly stated she was "not directing the utility to proceed with implementation of one of the three options described by the engineers at the Hearing". Note - There were only two Options provided by UGI Utilities. Complainant provided the three Options.

14. No Exception

15. Exception

Complainant filed Exceptions to Initial Decision December 04, 2021

16. Exceptions

UGI Utilities has provided no proof whatsoever that the new sidewalk anchor guy is within the 60 feet ROW from PENNDOT or even that UGI has a right to access. Complainant's understanding from experience is that PENNDOT does not have unbridled access and the property owner has the liability. Complainant maintains and is responsible for that property and sidewalks. There are liability issues of which Complainant holds responsibility. UGI Utilities has provided no evidence of any Certified Survey that they conducted. Employees of UGI came to Complainant's property with insignificant measuring tapes and was asked to leave. They were not Certified Land Surveyors. They have no permission to trespass. The new activity is violating the "Order of the Court".

Complainant has spent hours in conversation by telephone with UGI Engineer Walter Grodzki who agreed to come to her property but first Mr. Grodzki wanted to discuss by telephone. We did that. When Complainant provided additional proof from PENNDOT of the ROW, and their error, Mr. Grodzki never came but instead UGI Utilities employees, George Bokrosh, Brian Devine, and 3 other men, jumped the gun, ran down to the Complainant's property digging out guy wires and digging in a new contraption, only to partially but not correctly satisfy one part of their Option which was removal of guy wires and leaving overhead high voltage wire trespassing on Complainant's property with verbal threats and harassment to either provide ROW or overhead wire will be moved back to your specimen tree. The Option UGI chose in order to complete both parts A and B was done without discussion with me or even what Option I might even consider. They just went ahead and did what they wanted to do regardless of my rights leaving me with a threat. UGI Utilities has provided Complainant with no Certificate of Liability coverage allowing them to have a hazardous wire over her property or if someone is injured on their new contraption installation at her property. Walter Grodzki told Complainant during their last telephone discussion that he had to research on the internet about Certificate of Liability Insurance and had no knowledge of same.

17. Exceptions

There is still need to follow ROW at issue in this proceeding. Refer to Exception 16 herein 1st and 2nd paragraph.

Although UGI admits its facilities are encroaching and they still are encroaching, UGI has offered no reasonable solution to remedy their aerial encroachment, continues to trespass and is threatening Complainant and attempting to bully Complainant for a ROW which was never an option. They even violated the Judge's decision.

#### 18. Exception

New activity is causing Complainant hardship and is harassing Complainant. Encroachment is not "inadvertent" but a method concocted to gain access of a ROW to Complainant's historic property which is unreasonable and inappropriate. Furthermore, as stated in Exception 16, UGI Utilities has provided Complainant with no Certificate of Liability coverage allowing them to have a hazardous wire over her property or if someone is injured on their new contraption installation at her property.

#### 19. Exception

Premise expressed in Item 19 by Attorney Timothy K. McHugh, Counsel for UGI Utilities, Inc., is further proof of harassment by UGI Utilities, Inc and is insulting Complainant. Complaint of harassment and threats is in and of itself separate from trespass but related in that it all stems from the same cause. UGI Utilities and their subsidiaries have ignored boundaries with the movement of their Utility Poles and wires about her property ongoingly, they have ignored Complainant requests for information, they even misrepresented facts to her and the Court and did not provide any proof when she asked for it, and installed guy wires and contraptions without her approval.

#### 20. Exception

Complainant is troubled with the position that she can't go back and relitigate a case finalized based on false information yet UGI Utilities, Inc. can move forward on incorrect information and further violate rights of Complainant and cause her additional hardship.

Inasmuch as regulations quoted potentially preclude re-litigating a prior final order there is clause unless set aside, annulled or modified on judicial review. Complainant would appreciate Judicial review so as to prevent further hardship to complainant and her property.

#### 21. Exception

Complainant's rights have been violated by mischaracterizations, misrepresentations of facts and false evidence provided by UGI Utilities as well as incorrect information on pole locations being provided by UGI Utilities, Inc. in Court. UGI has not followed recommendations of the Court. Complainant continues to be violated with the harassment and threats being made by UGI George Bokroch, Senior Tech, if ROW is not provided wires will be moved back to your tree. Complainant is being treated differently since she filed Complaints with the PUC.

22. Exception

If ever a case should be relitigated on issue of false information, mischaracterizations of concepts and options, lack of conclusion with their Options thereby attempting intimidation techniques, bullying, threats and harassment for their lack of respect to Complainant's property, to Complainant's requests for factual information over a period of years, causing unnecessary stress and worry, and additional monetary expenses. Not only was the ROW mischaracterized and the Options provided misleading, but were provided in a way, in a method concocted to gain access to complainant's property by force.

UGI has violated Complainant's rights to her property for many years, ignoring for many years her requests to remedy the problem but instead the trespass grew, harassment and threats, and the subsidiaries of which UGI benefited financially from their use of the utility poles further imposed upon the complainant's rights of ownership while UGI benefited from these ancillary violators.

23. Present Complaint filed is not the same. UGI Trespassed. UGI is now harassing and threatening. Complainant is being treated differently since filing a PUC Complaint. Situation has gotten worse. Stress, worry and concern follow conversations with UGI representative George Bokroch and Walter Grodzki and has become hard to bear with condescending remarks from Legal as well. Moving wires to my specimen tree and damage to my tree bring snickers from Mr. Bokroch in my presence following his threats. In several conversations at my property, Complainant reminded Mr. Bokroch to stop being condescending to me. Complaint has evolved from trespass which still continues to harassment and threats, for added violation to property and rights of Complainant, and to Complainant personally.

24. The fact that UGI Utilities provided non-factual information over so a long period of time and also at Hearing proceedings, then continues to trespass with a make shift modification of guy wires but not to the satisfaction of trespass as that still continues, and to add threats and intimidations to satisfy their plot, with accusations that Complainant has not cooperated which is an insult to the Complainant, but even more hurtful, it is an insult to the Judicial process and all of us participants.

Respectfully submitted,

  
Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, PA 18655  
(570) 542-2346

DATE: August 18, 2022

**Commonwealth of Pennsylvania  
Before the Pennsylvania Public Utility Commission**

In the Matter of:

Francene Tearpock-Martini  
Complainant  
v.

Docket No. C-2022-3033942

UGI Utilities, Inc.  
Respondent

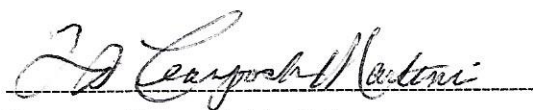
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter upon the parties listed below, in accordance with the requirements of 52 PA Code relating to service by a Participant.

**VIA ELECTRONIC MAIL**

Timothy K. McHugh (I.D. 317906)  
UGI Corporation  
460 N. Gulph Road  
King of Prussia PA 19406  
Tel. (610) 768-3639

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
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DATE: August 18, 2022

C-2022-3033942 Francene Tearpock-Martini v UGI Utilities Inc.

EXHIBIT - B

1. Property Deed
2. PENNDOT 2008 pg. 1, 2
3. Randy Howard Survey Map
4. Frank Grabowski Subdivision Map

**DEED OF CONFIRMATION**

**THIS INDENTURE MADE** this 6<sup>th</sup> day of March in the year Two Thousand and Seventeen (2017).

**BETWEEN FRANCENE TEARPOCK-MARTINI**, unmarried, of the Borough of Shickshinny, County of Luzerne and Commonwealth of Pennsylvania, hereinafter called,

**GRANTOR**

**AND**

**FRANCENE TEARPOCK-MARTINI**, unmarried, of the Borough of Shickshinny, County of Luzerne and Commonwealth of Pennsylvania, hereinafter called,

**GRANTEE**

**WITNESSETH**, That the said Grantor for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, unto her well and truly paid by the said Grantee at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain and sell, alien, enfeoff, release and confirm unto the said Grantee, her successors and assigns, all those certain pieces or parcels of land situate in the Borough of Shickshinny, County of Luzerne and Commonwealth of Pennsylvania, bounded and described as follows, to wit:

**FIRST THEREOF (LOT 1)**

**BEGINNING** at a point, said point being located at the intersection of the southwesterly right-of-way line of Furnace Street and the westerly right-of-way line of State Route 1100 (also known as South Main Street);

**THENCE** along the westerly sideline of South Main Street, South 1 degree 29 minutes 40 seconds West, 51.14 feet to a corner at the intersection of the westerly sideline of South Main Street and the northerly right-of-way line of State Route 4004 (also known as Butler Street);

**THENCE** along the northerly sideline of Butler Street, North 73 degrees 20 minutes 00 seconds West, 97.00 feet to a Drill Hole in concrete found at the southeast corner of lands now or formerly of Vincent and Colleen Noble;

**THENCE** along lands now or formerly of Noble the following four courses and distances:

1) North 17 degrees 10 minutes 30 seconds East, 89.01 feet to an Iron Pin/Cap set;

- 2) North 72 degrees 52 minutes 55 seconds West, 15.56 feet to an Iron Pin/Cap set;
- 3) South 17 degrees 35 minutes 10 seconds West, 16.00 feet to a Drill Hole set in concrete;
- 4) North 73 degrees 20 minutes 00 seconds West, 24.32 feet to an Iron Pin/Cap set on line of lands now or formerly of Leona M. Sherrick;

**THENCE** along lands now or formerly of Sherrick, North 17 degrees 10 minutes 30 seconds East, 69.77 feet to a Drill Hole set in a concrete wall on the southwesterly right-of-way line of Furnace Street;

**THENCE** along the southwesterly line of Furnace Street, South 35 degrees 55 minutes 55 seconds East, 154.01 feet to the point of **BEGINNING**.

**CONTAINING** 9,007.96 square feet.

**THE ABOVE DESCRIBED LOT** is a combination of the following two parcels:

1) Deed of Francene Tearpock-Martini, et vir., to Francene Tearpock-Martini, dated September 14, 1987, and recorded in Deed Book 2247, at Page 224;

2) Deed of Homecomings Financial Network, Inc. to Francene Tearpock-Martini, dated September 20, 2004, and recorded in Record Book 3004, at Page 2394 71.

**ALSO BEING** the combined Lot shown on the Francene Tearpock-Martini Subdivision as surveyed by Randy L. Howard, P.L.S., dated February 14, 2005 and recorded in Map Book 175, at Page 59, and on the revised plat of the same recorded in Map Book 176, at Page 20.

**TOGETHER WITH** all of the rights and privileges as more fully set forth and described in a certain "Deed of Easement" from Leona M. Sherrick to Francene Tearpock-Martini, the Grantor and Grantee herein, dated the 9th day of May, 2005, and recorded in the Office of the Recorder of Deeds in and for Luzerne County, Pennsylvania, in Record Book 3005, at Page 118915.

**UNDER AND SUBJECT** to the following restrictive covenants, which shall be deemed to be covenants running with the land:

1. No subdivision of the herein described premises shall be hereafter undertaken.
2. No trees or other plantings made by Francene Tearpock-Martini upon the premises shall be cut down, removed, or otherwise destroyed or taken from the herein described premises.

**UNDER AND SUBJECT, ALSO,** to any and all exceptions, reservations, restrictions, conditions, covenants, licenses, easements and/or agreements as are or may be contained in prior instruments forming the chain or line of title to the premises herein conveyed and/or as may be ascertained from a visible inspection of the premises herein conveyed.

**The Property Identification Number/Parcel Identifier Number (“PIN”) of the premises herein conveyed is: L4SE1 B025 L001 and L005 (now combined).**

Said allotment BEING the premises conveyed to the grantor herein by deed dated May 19, 2005 and duly recorded in and to the Office of the Recorder of Deeds of Luzerne County at Deed Book 3005, page 182622, et seq.

**SECOND THEREOF (LOT 2)**

**BEGINNING** at the southeasterly corner of lands of now or formerly of Harold Beach, in the westerly line of Main Street; thence along the line of lands of now or formerly of H. Beach, north 73 degrees 03 minutes 00 seconds West 8.60 feet; thence along the same, North 54 degrees 56 minutes 00 seconds West 104.76 feet to an iron pin corner; thence along the line of lands now or formerly of B. Caverly, South 35 degrees 35 minutes 00 seconds West 34.03 feet to an iron pin corner; thence along the northerly side of Furnance Street, South 38 degrees 01 minutes 40 seconds East 184.42 feet; thence along the westerly side of Main Street, North 00 degrees 05 minutes 00 seconds East 110.25 feet to the place of beginning.

**CONTAINING** 8,055 square feet of land.

**The Property Identification Number/Parcel Identifier Number (“PIN”) of the premises herein conveyed is: L4SE1 B26 L6 001.**

Said allotment BEING the premises conveyed to the grantor herein by deed dated May 25, 2005 and duly recorded in and to the Office of the Recorder of Deeds of Luzerne County at Deed Book 3005, page 182618, et seq.

**UNDER AND SUBJECT**, to any and all matters of record, provided that such matters remain operative and valid in connection with the herein described Lot 1 and Lot 2. Lot 1 and Lot 2 described herein is collectively called the, “Property”.

Together with all and singular the buildings, improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted Property belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor), as well at law as in equity, of, in and to the same.

This is a Deed of Confirmation from Grantor to herself as Grantee made pursuant to the Adjudication and Decree of Court entered on January 31, 2014 in the civil action docketed to

Luzerne County docket number 2009 – 17205 and captioned as, “Francene Tearpock-Martini, Plaintiff v. Vincent Noble and Colleen Noble, Defendants,” regarding the creation and imposition of an easement by prescription (hereinafter referred to as the, “Easement”) whereby the Property is the dominant tenement. A copy of the Adjudication and Decree of Court is attached hereto, made a part hereof and marked as Exhibit “A”. No consideration has been transferred between the Grantor and the Grantee herein.

**The Property Identification Number/Parcel Identifier Number (“PIN”) of the premises burdened by the easement described above is: L4SE1 B25 L4, being the same premises conveyed to Vincent Noble and Coleen Noble, his wife, now or formerly of 30 Conyngham Street, Shickshinny, Pennsylvania, by deed dated May 31, 2000 and duly recorded in and to the Office of the Recorder of Deeds of Luzerne County at Deed Book 2723, page 0001, et seq.**

To have and to hold the said Property above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, her heirs, personal representatives, successors and assigns, to and for the only proper use and benefit of the said Grantee, her heirs, personal representatives, successors and assigns, forever.

**SUBJECT AS AFORESAID.**

**AND** the said Grantor does covenant, promise and agree, to and with the said Grantee, her successors and assigns, by these presents, that she, the said Grantor and her successors and assigns, all and singular the Property herein above described and granted, or mentioned and intended so to be, with the Appurtenances, unto the said Grantee, her successors and assigns, against her, the said Grantor and her successors and assigns and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by from or under her or any of them, shall and will, Subject as aforesaid, WARRANT and forever DEFEND.

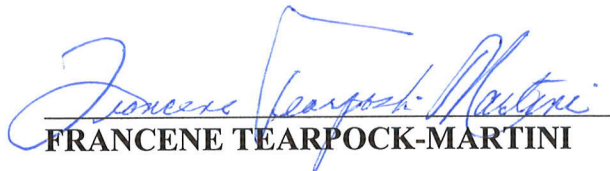
**IN WITNESS WHEREOF**, said Grantor has hereunto set her hand and seal the day and year first above written.

Signed, Sealed and Delivered  
in the presence of

Witness:

  
\_\_\_\_\_

Grantor/Grantee

  
\_\_\_\_\_ **FRANCENE TEARPOCK-MARTINI**



# **EXHIBIT “A”**



Filing ID: 1842535  
2009-17205-0053 Other

Luzerne County Civil Records  
1/31/2014 3:24:03 PM

IN

OF LUZERNE COUNTY

FRANCENE TEARPOCK-MARTINI,

Plaintiff

vs.

VINCENT NOBLE and COLLEEN NOBLE,

Defendants

NO. 17205 OF 2009

CIVIL ACTION

2014 JAN 31 PM 2:40

FILED  
PROthonotary  
LUZERNE COUNTY



ADJUDICATION

On July 6, 2012, Plaintiff, Francene Tearpock-Martini ("Tearpock-Martini" or "Plaintiff") filed an Amended Complaint whereby Defendants, Vincent Noble and Colleen Noble, (collectively "The Nobles" or "Defendants") would be ordered to remove a certain fence which separates their properties and prevents Plaintiff's vehicular access to her property. Plaintiff's Complaint is premised on the contention that Plaintiff has established ownership of a prescriptive easement which entitles her to rights of ingress and egress over the Nobles' portion of a seventeen-foot wide driveway, portions of which are located on their respective properties. Plaintiff also seeks a court order directing that the Defendants be permanently enjoined from further interference or obstruction of Plaintiff's exercise of her easement over the Defendants' portion of the subject driveway. Defendants filed an Answer wherein they admit to having constructed the subject fence as aforesated but assert that any use of the Defendants' property by Plaintiff was granted to her on a limited and momentary basis or that Plaintiff trespassed on Defendants' property without their knowledge or consent. The Defendants further acknowledge in their Answer that they did occasionally grant permission to Plaintiff to

use the driveway for brief periods of time, but that Plaintiff abused that privilege, leading Defendants to have erected the fence in question. After a non-jury trial conducted on November 25, 2013, and upon consideration of this matter, we enter the following Adjudication and Decree pursuant to Pa.R.C.P. No. 1038.

#### ISSUE

The issue in this action is: Whether Plaintiff is the owner of a prescriptive easement over Defendants' portion of the subject driveway located on their properties so as to enable vehicular access to Plaintiff's property and to accommodate deliveries of coal and large bags of salt and other maintenance items?

#### FINDINGS OF FACT

1. Tearpock-Martini is the owner of real property improved with a single-family home and Carriage House/garage with an address of 56 South Main Street, Shickshinny, Luzerne County, Pennsylvania 18655, more particularly described in a deed dated May 19, 2005, and recorded to Luzerne County Deed Book 3005, Page 182622, et seq., as well as a deed dated May 25, 2005, and recorded to Luzerne County Deed Book 3005, Page 182618, et seq. (collectively the "Martini Property").
2. Tearpock-Martini has owned the Martini Property, upon which the House and Garage are situated, since November 18, 1977.
3. Tearpock-Martini and her former spouse, David Martini, acquired the Martini property by way of a Deed dated November 18, 1977, and recorded to Luzerne County Deed Book 1944, Page 873, et seq.
4. Pursuant to a stipulation filed to an action in divorce filed with the Prothonotary of Luzerne County to Luzerne County Docket Number 1331-C of 1982,

David Martini conveyed his interest in the Martini Property to Tearpock-Martini by way of a Deed dated September 14, 1987, and recorded to Luzerne County Deed Book 2247, Page 224, et seq.

5. Vincent Noble and Colleen Noble, husband and wife, (The Nobles) currently reside at 8 West Butler Street, Shickshinny, Luzerne County, Pennsylvania 18655.

6. The Nobles acquired ownership of their aforesaid property located at 8 West Butler Street by Deed dated May 31, 2000, and recorded to Luzerne County Deed Book 2723, Page 0001, et seq., on June 5, 2000. ("The Noble property").

7. The Noble property was previously owned by Betty Jane Wojcik, Marie Uram and Joanne Scott, by way of a deed dated April 6, 1999, and recorded to Luzerne County Deed Book 2673, Page 1023, et seq., on April 7, 1999.

8. The Martini Property and the Noble Property are immediately adjacent to and contiguous with each other on the southwest side of the Martini Property as depicted in a survey map obtained by Tearpock-Martini and dated February 14, 2005.

9. Vehicular access to and from the Martini property is over a concrete paved driveway located partly on the Martini Property and partly on the Noble Property and shared by the Noble Property and the Martini Property being 17-feet wide (10 feet 6 inches on the Noble Property and 6 feet 6 inches on the Martini Property) and extending from the foundation of the Noble home to the foundation of the Martini home as depicted and described on a survey plat prepared by Randy Howard, P.L.S., dated February 14, 2005.

10. The portion of shared driveway located on the Martini Property is not sufficiently wide for someone to enter and exit on the Martini driveway without entering

a narrow paved portion of the Noble property immediately adjacent and contiguous to the Martini property.

11. Plaintiff has had vehicular access over the aforesaid 17-foot wide driveway area located on the Tearpock-Martini and Noble properties continuously for a period of time running from November 18, 1977, to the present time, except when the Nobles erected a fence obstructing the aforesaid access sometime in calendar year 2009.

12. The Nobles' predecessors in title at no time granted permission to the Plaintiff or her former husband to use the subject easement area.

13. Defendants, sometime during calendar year 2009, impeded Plaintiff's access as aforestated by way of constructing a makeshift picket fence along the property line separating the Tearpock-Martini and Noble properties and later dismantled and replaced it with a crude rebar and wire fence in the driveway along the property line separating the subject properties.

14. The construction of the rebar fence has prevented Tearpock-Martini and her guests or invitees from more easily having coal, large bags of salt, and/or other maintenance items delivered to the Martini property.

15. The construction of the rebar fence has prevented Tearpock-Martini and her guests and invitees from utilizing the driveway to enter and exit the Martini Property.

16. Use of the driveway by Tearpock-Martini, and her guests and invitees, was adverse, open, continuous, notorious, and uninterrupted for a period of time in excess of twenty-one (21) years prior to Defendants' acquisition of their property and prior to Defendants' construction of the picket fence.

## DISCUSSION

It is well settled that in order to acquire an easement by prescription, the exercise of possession must be adverse, open, notorious, continuous, and uninterrupted for a period of at least 21 years and that proof of such exercise must be clear and positive. *See Keefer v. Jones*, 467 Pa. 544, 547, 359 A.2d 735, 736-37 (1976); *Lewkowicz v. Blumish*, 442 Pa. 369, 371, 275 A.2d 69, 70 (1971); *see also Waltmyer v. Smith*, 383 Pa. Super. 291, 556 A.2d 912 (1989). Also, it is equally well settled that the principle of easement by prescription is derived from the concept of adverse possession. Our Supreme Court has held that one who claims title by adverse possession must prove that he had actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land in question for 21 years. *Conneaut Lake Park, Inc. v. Klingensmith*, 362 Pa. 592, 66 A.2d 828 (1949).

We must now examine whether the Plaintiff, in the instant case, has established the necessary elements to support her claim of an easement by prescription. It is important to focus on the timeframe commencing with Tearpock-Martini's ownership and use of her property beginning on November 18, 1977, and prior to Nobles' acquisition of their property on May 31, 2000, well before Nobles' placement of a picket fence along the property line in 2009.

Tearpock-Martini's unrefuted testimony establishes that during the aforementioned years, from late in calendar year 1977 through the beginning of calendar year 2000, she had used significant portions of the driveway in question to accommodate delivery of coal, salt bags, and other maintenance items to her property. This usage was adverse, open, and notorious as against Nobles' predecessors in title

(Wojcik) and was continuous and uninterrupted for a period well in excess of twenty-one (21) years, all of which pre-dated Nobles' acquisition of their property in calendar year 2000. The record is devoid of any evidence that the Tearpock-Martini's use of the Wojcik portion of the driveway was permissive. The record is undisputed that the property line establishes the Tearpock-Martini portion of the driveway being six feet six inches in width and the Nobles' (Wojcik) side being ten feet six inches in width. It is patently clear that the coal trucks in question which delivered substantial amounts of coal used by Tearpock-Martini to heat her sizable home were significantly wider than six feet six inches and that accessing three (3) separate coal shoots on her property would have required passing over the easement area and utilizing same to complete coal deliveries.

Accordingly, we can conclude that the necessary elements that the adverse use be open and notorious have been readily established by the Plaintiff. When no special relationship exists between the parties, a sufficiently notorious use will be presumed to be enough to alert the owner of the land to an adverse claim. See *Waltmyer, supra*. In the case at bar, there has been shared use of the alleged easement area during the prescriptive period, with Tearpock-Martini and her predecessors in title claiming a right to vehicular access over a portion of the Nobles' driveway such that both the user and owner have had material access over each other's areas of their respective properties.

The fact that the usage by Tearpock-Martini was interrupted with the Nobles' erection of a fence in calendar year 2009 has done nothing to diminish her adverse rights acquired previous to the Nobles' acquisition of their property. The twenty-one (21) year requisite period of adverse use had already been met and the Nobles' attempt

to thwart Tearpock-Martini's use by erecting a fence did not serve to destroy the prescriptive rights which the Tearpock-Martini had previously acquired.

#### CONCLUSIONS OF LAW

1. Plaintiff has established, clearly and positively, the essential elements to acquire an easement by prescription over the driveway portion of the Noble property.
2. Defendants have failed to establish an interruption in the adverse use during the prescriptive period.



Filing ID: 1842489  
2009-17205-0052 Order with Rule 236

Luzerne County Civil Records  
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OF LUZERNE COUNTY

FRANCENE TEARPOCK-MARTINI,

Plaintiffs

vs.

VINCENT NOBLE and COLLEEN NOBLE,

Defendants

NO. 17205 OF 2009

CIVIL ACTION

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PROthonARY  
LUZERNE COUNTY  
2014 JAN 31 PM 2:41

DECREE

AND NOW, this 31<sup>st</sup> day of January, 2014, following trial in this matter, and based upon a careful and thorough review and analysis of the record, it is hereby ORDERED, ADJUDGED, and DECREED as follows:


1. That Defendants, Vincent Noble and Colleen Noble, shall remove the rebar fence which they have erected along the property line located within the 17- foot driveway area shared with Plaintiff, Francene Tearpock-Martini, located along the southwesterly boundary line of Plaintiff's property with a current address of 56 South Main Street, Shickshinny, Luzerne County, Pennsylvania, 18655.
2. That neither Defendants, Vincent Noble and Colleen Noble, nor their heirs, successors or assigns, shall block the subject right-of-way and said right-of-way shall be kept open subject to the reasonable needs of the adjoining property owners in addressing service to their properties.
3. That neither Plaintiff nor Defendants and their successors, heirs and assigns, respectively, shall erect any fence or other obstruction in the shared driveway preventing its full use by both Plaintiff and Defendants. Plaintiff and Defendants

shall cooperate in the use, upkeep, and maintenance of the shared driveway and shall share the cost thereof equally.

4. The Court shall retain jurisdiction in this matter in order to ascertain compliance herewith.

5. The Prothonotary is directed to notify the attorneys of record and each party, if unrepresented, of the filing of this Adjudication and Decree pursuant to Pa.R.C.P. No. 236.

By the Court:

  
P. J.

Attorney for Plaintiff:  
Francis J. Hoegen, Esquire  
Hoegen & Associates, P.C.  
152 South Franklin Street  
Wilkes-Barre, PA 18703-0346

Vincent & Colleen Noble, Pro Se  
8 West Butler Street  
Shickshinny, PA 18655

ENGINEERING DISTRICT 4-0  
55 KEYSTONE INDUSTRIAL PARK  
DUNMORE PA. 18512  
PHONE 570-963-4071  
FAX 570-963-4949  
JULY 2 2008

Luzerne County  
Borough of Shickshinny  
SR 0011 and Furnace Street  
Bible Baptist Church Sign Request

MARGE STOLA  
BOROUGH OF SHICKSHINNY  
BOROUGH BUILDING  
35 WEST UNION STREET  
SHICKSHINNY PA 18655

Dear Ms. Stola:


This letter is in regards to your letter dated June 11, 2008 addressed to Mr. Keith Williams, Traffic Engineer, Engineering District 4-0, Dunmore, Pa.

It is the Department's Policy not to allow signs within our right-of-way. The only location a sign can be erected is on private property providing the land owner grants the sign owner permission.

The right-of-way width in the subject location is 60 feet.

If you have any questions, I can be reached at (570) 963-4071.

Very truly yours,



Ralph Del Rosso  
RIGHT-OF-WAY ADMINISTRATOR

Attachments

040/DR/kss

CC:

Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, Pa. 18655

✓  
CIRC:

G.J. Roberts

D. Noone

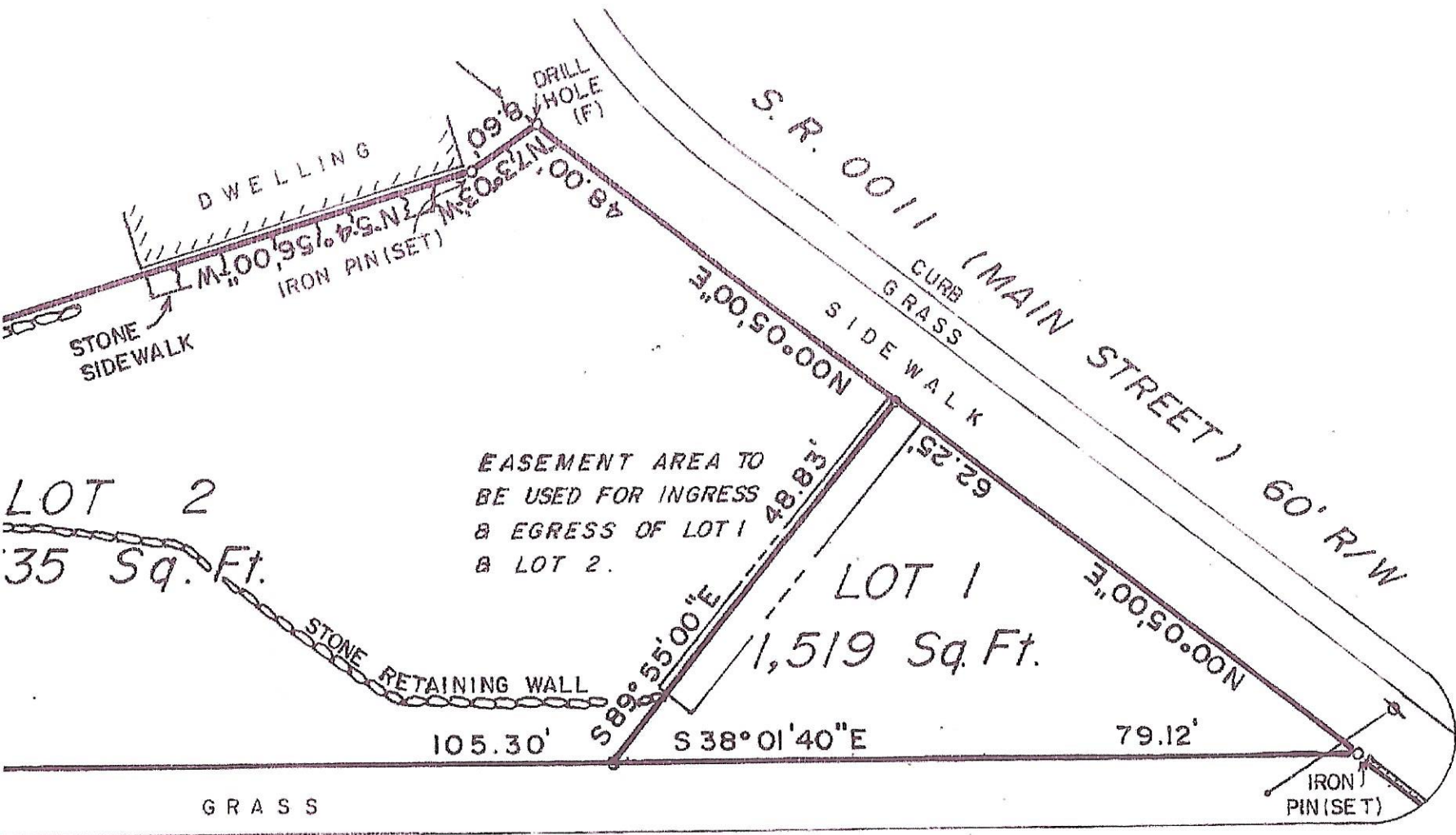
K.D. Williams

R. Del Rosso

J. Hawley

D. Refice (file)





LOT 2  
35 Sq. Ft.

EASEMENT AREA TO  
BE USED FOR INGRESS  
& EGRESS OF LOT 1  
& LOT 2.

LOT 1  
1,519 Sq. Ft.

FURNACE STREET

SURVEY MAP OF LANDS OF  
FRANCENE TEARPOCK - MARTIN I  
WICKSHINNY BOROUGH, LUZERNE COUNTY, PENNA.



FRANK A.  
1499 STAT  
STILLWATE

C-2022-3033942 Francene Tearpock-Martini v UGI Utilities Inc.

EXHIBIT - C

Response and Exceptions of Complainant to UGI Utilities, Inc.  
August 18, 2022

**Commonwealth of Pennsylvania  
Before the Pennsylvania Public Utility Commission**

In the Matter of:

Francene Tearpock-Martini  
Complainant

Docket No. C-2022-3033942

v.

UGI Utilities, Inc.  
Respondent

**RESPONSE AND EXCEPTIONS OF COMPLAINANT TO UGI UTILITIES, INC.**

**AND NOW** Complainant Francene Tearpock-Martini, in support of her complaint, avers as follows:

1. No exception
2. No exception
3. No exception
- 4.- 5. Exceptions

The location of the Utility poles along Complainant's property are as follows and have been mischaracterized by UGI Utilities. There is a Utility Pole along SR 11 ROW east side of my property (near my historic stone wall). Parallel to that pole, there is also another Utility pole also east side of my property along SR 11 ROW (near my landscaped hill). My property is divided by a small town-road called Furnace Street. It is at the location of my landscaped hill that the 'guy wires' were placed in trespass both at the land level where they connected deep into the ground and aerial above that hill coming from that Utility Pole east side of my property.

My word is truth and I know my property and what I own. I have proven that the information I provided in two previous hearings through surveys by Certified Land Surveyors, two of them, and my ROW information has been further supported most recently by PENNDOT.

Insults and mischaracterizations of me will not change facts of my ownership and my rights and only causes hard feelings. I am being threatened and harassed or I would not have provided these in my filings. It will get UGI Utilities no benefit to say that I am "fabricating" such because that would not be true.

UGI Utilities provided me with two options to remedy this problem - not three. I provided UGI Utilities with three options safe and cost effective. The ruling by Honorable Judge Barnes was that we get together to resolve our differences. When I received further documentation of my Rights through correspondence with PENNDOT ROW Management, I immediately provided it to UGI Utilities. I spoke

with their lead Engineer Walter Grodzki when he phoned me and we spent another 2 and 1/2 hours on the telephone. Even though I asked him to come to my property personally to go over things, he suggested that we first have the telephone discussion, which we did, but he never came. Instead almost immediately, UGI Utilities came to my property with 5 trucks, 5 men and 2 additional road safety crew members, blocked traffic, had their crew remove the 'guy wires' from the land which was outlined in one of their two Options part A, leaving the overhead aerial trespass remaining, part B, and giving me little recourse but threatening me that if I do not give them a ROW, they will return the overhead wire to the Utility pole parallel to the one presently, both poles are on the east side of SR 11 east of my property which would ultimately run up to the Southwest Pole along my property on Furnace Street - such wire running over the sidewalk area through my specimen tree which is about 40 feet in height as I planted it 45 years ago when I moved here. It is always pruned by a Certified Arborist. By history of records through PUC, you will see that UGI Utilities violated that some years ago and had their bucket truck and employees' trespass 12 feet into my property damaging my specimen tree which has never completely recovered from such injury. They did pay penalties for their trespass as ordered by the Honorable PUC Judge Miello at that time - but the fact remains, they ruined the appearance of my beautiful tree shaping it like a chair, at my beautiful historic property. They came without notice and did that damage.

It seems this is UGI Utilities way of doing things since currently they did the similar thing and came to my property in haste after I sent George Bokrosh and Walter Grodzki by email the additional proof from PENNDOT on their ROW. They rushed in an attempt so to railroad me into providing them with a ROW. George Bokroch of UGI threatened me if such ROW was not provided, they would move the overhead wire back to my specimen tree location.

Attorney Crane for UGI at the previous Hearing was determined to attempt to humiliate me that the photography I provided at Hearing was to flaunt my property but my intention with the photography was specific to providing a visual of the locations of the poles around my property for Exhibits and Information on the alignment of the poles since my property is unique and being surrounded by three streets on an escarpment.

For some historical information, it was the property of the Founder of our town who at one time owned everything and plotted out the town and selected 56 South Main Street for his Homestead. I do not have to flaunt my property. It speaks for itself. I had the opportunity to purchase it in 1977. I restored it and was honored by the Luzerne County Historical Society for restoration and preservation in 2002, and ultimately it was nominated and placed on the National Historic Registry in 2009.

Now in this "Answer of Respondent, UGI Utilities, Inc." by their Corporate Attorney Timothy K. McHugh, Complainant, Francene Tearpock-Martini, will proceed to address each issue individually as presented with 'Exceptions'. Please allow me to be clear that I never in any way mislead anyone into thinking they would get a ROW from me onto my property. I never misrepresented anything. The evidence I provided was thoroughly researched and accurate. UGI left me with a bad situation and little choice by taking it upon themselves to pick their Option which would cause my property the most harm. By decision of Honorable Judge Barnes, her recommendation was to come to some agreement between the Parties - work things out. When I received additional proof from PENNDOT of their ROW I immediately emailed and phoned UGI Utilities with this important information. I provided it to Walter Grodzki and George Bockroch. Instead of working things out, they rushed here to do Option Part A leaving me with threats for Part B. The threats were specific - "ROW or the electric line will return to your specimen tree".

UGI should have known what their ROW was before the Hearing. Every detail should have been fact checked by UGI Engineer, Mr. Grodzki and Senior Tech Mr. Bokroch, before providing incorrect unverified information to the Judge.

All through the years I have contacted UGI Utilities and complained to them about the damages to my property caused by trucks parking on my property, employees of UGI and subsidiaries who rent UGI Utility poles, running up and down my landscaped hill, the safety issues to my property with their 'guy wires' on my property. I asked over and over again to provide proof of any rights they had, and they provided no proof. Eventually during so many time-consuming discussions with UGI Walter Grodzki, he admitted he had no proof. Then at the Hearing, Walter Grodzki and George Bokroch testified providing false information about their ROW and incorrect pole site locations.

If ever there was a case that should be reopened by whatever authority the PUC has to do so, it should be this case. The incorrect information UGI provided at Hearing through Walter Grodzki and George Bokroch, Engineering personnel, should have been fact-checked and verified. Nevertheless, UGI Utilities, Inc. have jumped the gun and are now trying to railroad me into some ROW that will not happen to my historic property. UGI Utilities are causing further stress and hardship to me, threats to further damage my tree, cost and expenses for maintenance, concern and worry, continue to harass me and blame me for the mistakes they are making and have made.

The biggest mistake UGI made back in the 90's was when they moved one of their Utility Poles from the northwest side of Furnace Street to the southwest side of Furnace Street thereby causing all these subsequent problems that continue to the present time due to incorrect placement of that pole from one side of Furnace Street to the other side - north to south side. They threatened me then too. UGI Tim Sutliff told me to pay them \$10,000 and they would move the pole back across Furnace Street, yet at that PUC Hearing he couldn't remember where the pole was initially on Furnace Street. UGI only knew it was on Furnace Street. Judge Miello asked that question and that was how it was answered. I lived at my property here since 1977. I knew where the pole was and I even have photographs of it.

Attorney Crane for UGI accused me of flaunting my property with photographs at the prior PUC Hearing. I provided photographs for evidence and Exhibits, not to flaunt my property. My property speaks for itself.

For your further understanding, there is no Utility pole at the "northeast" side of "Furnace" Street. - let us be clear on that. There is a pole on "SR 11" northeast side" of property. There is a Pole situated on the "southwest" side of "Furnace" Street which is the pole they moved to that location from the "northwest" side to the "southwest side of "Furnace" Street placed into the middle of the sidewalk there in front of my Carriage House. That was done back in the 90's that I protested. (See comment above noting the movement of the pole.)

What is important at the present time for your clear understanding is that UGI overhead electric wire that ran from the "east" side pole at my property "SR 11" location near the stone wall described earlier ran up the sidewalk to the "southwest" location of "Furnace" Street and is what caused the tree issue back in the 90's with continued problems and hardship for Complainant until 2019 when UGI finally moved their wires away from my tree to the other east side pole parallel on "SR11" as described earlier, at the hill area where their guy wires have been trespassing on my property. Now, you are forcing me to accept an Option, part B for more hardship again after you finally remedied the problem you caused me for so many years. Needless to say, this is very stressful and threatening to me and my property.

6. No exception

7. Exception

(b) Complainant has spoken to Utility Company representatives about their harassment and threats. Complainant has asked George Bokroch on two separate occasions not talk to me in a condescending manner. Brian Devine, Engineering Tech was present on the one occasion when I asked Mr. Bokroch not to talk to me in a condescending manner. Complainant has also asked Mr. Bokroch to stop threatening me that he will put the wires back to my tree. It causes me much worry and stress.

Mr. Bokroch had also brought up the Hearing about the tree to me and specifically mentioned Tim Sutliff's name. Oddly Mr. Sutliff is deceased for many years. It was then during that specific conversation standing along my property by Furnace Street that I came to realize Mr. Bokroch had testified at that Hearing back in the 90's regarding my tree along with Tim Sutliff and I knew he was threatening me about moving the wires. I told him he was threatening me and to stop it.

#### **NEW MATTER RESPONSE**

8. Complainant incorporates by references responses contained in paragraphs 1 through 7 Responses and Exceptions above fully set forth at length.

9. No Exception

10. No Exception

11. Exception

Complainant notified UGI Utilities over a period of many years about their trespass and she was continuously told they had a right to be on her property. Dating as far back to employee Joe Rymar, Complainant was told UGI had a right to my property. My surveys said otherwise. When asked for proof UGI provided no proof. Prior to PUC Complaint, Engineer Grodzki did finally admit to Complainant that he had "no proof" although at Hearing, testimony was provided by UGI Utilities that they had proof of a ROW of 66 feet which was not correct.

UGI Utilities employees and their subsidiaries who rented space on their Utility poles continued to run up and down on Complainant's landscaped hill. They continued to park trucks on her property. Their trespass was not "inadvertent", it was a safety hazard. It required constant maintenance and was a liability to the Complainant. Complainant provided 3 Options to UGI Utilities to remedy the problem to no avail. Only after the Complaint was filed with the PUC did they begin to pursue possible options for removal of their encroachment.

12. No Exception

13. Exceptions

Although proof was provided by Complainant that UGI ROW was 60 feet, not 66 feet, UGI Utilities, Inc. testified Complainant's surveys were "irrelevant" and mischaracterized their own information as being accurate. UGI Utilities also mischaracterized the location of their poles and the consequences of their

Options which would be a hardship to me. Honorable Judge Barnes encouraged that the Parties work together to implement the removal of the "aerial" guy wires, and agreed because of UGI incorrect information provided that their Options Part A Part B seemed reasonable thus leaving Complainant with subsequent threats, harassment, and bullying by UGI personnel as they continue to trespass misrepresenting the Judge's order stating that they are "doing what the Judge ordered". Honorable Judge Barnes clearly stated she was "not directing the utility to proceed with implementation of one of the three options described by the engineers at the Hearing". Note - There were only two Options provided by UGI Utilities. Complainant provided the three Options.

14. No Exception

15. Exception

Complainant filed Exceptions to Initial Decision December 04, 2021

16. Exceptions

UGI Utilities has provided no proof whatsoever that the new sidewalk anchor guy is within the 60 feet ROW from PENNDOT or even that UGI has a right to access. Complainant's understanding from experience is that PENNDOT does not have unbridled access and the property owner has the liability. Complainant maintains and is responsible for that property and sidewalks. There are liability issues of which Complainant holds responsibility. UGI Utilities has provided no evidence of any Certified Survey that they conducted. Employees of UGI came to Complainant's property with insignificant measuring tapes and was asked to leave. They were not Certified Land Surveyors. They have no permission to trespass. The new activity is violating the "Order of the Court".

Complainant has spent hours in conversation by telephone with UGI Engineer Walter Grodzki who agreed to come to her property but first Mr. Grodzki wanted to discuss by telephone. We did that. When Complainant provided additional proof from PENNDOT of the ROW, and their error, Mr. Grodzki never came but instead UGI Utilities employees, George Bokrosh, Brian Devine, and 3 other men, jumped the gun, ran down to the Complainant's property digging out guy wires and digging in a new contraption, only to partially but not correctly satisfy one part of their Option which was removal of guy wires and leaving overhead high voltage wire trespassing on Complainant's property with verbal threats and harassment to either provide ROW or overhead wire will be moved back to your specimen tree. The Option UGI chose in order to complete both parts A and B was done without discussion with me or even what Option I might even consider. They just went ahead and did what they wanted to do regardless of my rights leaving me with a threat. UGI Utilities has provided Complainant with no Certificate of Liability coverage allowing them to have a hazardous wire over her property or if someone is injured on their new contraption installation at her property. Walter Grodzki told Complainant during their last telephone discussion that he had to research on the internet about Certificate of Liability Insurance and had no knowledge of same.

17. Exceptions

There is still need to follow ROW at issue in this proceeding. Refer to Exception 16 herein 1st and 2nd paragraph.

Although UGI admits its facilities are encroaching and they still are encroaching, UGI has offered no reasonable solution to remedy their aerial encroachment, continues to trespass and is threatening Complainant and attempting to bully Complainant for a ROW which was never an option. They even violated the Judge's decision.

#### 18. Exception

New activity is causing Complainant hardship and is harassing Complainant. Encroachment is not "inadvertent" but a method concocted to gain access of a ROW to Complainant's historic property which is unreasonable and inappropriate. Furthermore, as stated in Exception 16, UGI Utilities has provided Complainant with no Certificate of Liability coverage allowing them to have a hazardous wire over her property or if someone is injured on their new contraption installation at her property.

#### 19. Exception

Premise expressed in Item 19 by Attorney Timothy K. McHugh, Counsel for UGI Utilities, Inc., is further proof of harassment by UGI Utilities, Inc and is insulting Complainant. Complaint of harassment and threats is in and of itself separate from trespass but related in that it all stems from the same cause. UGI Utilities and their subsidiaries have ignored boundaries with the movement of their Utility Poles and wires about her property ongoingly, they have ignored Complainant requests for information, they even misrepresented facts to her and the Court and did not provide any proof when she asked for it, and installed guy wires and contraptions without her approval.

#### 20. Exception

Complainant is troubled with the position that she can't go back and relitigate a case finalized based on false information yet UGI Utilities, Inc. can move forward on incorrect information and further violate rights of Complainant and cause her additional hardship.

Inasmuch as regulations quoted potentially preclude re-litigating a prior final order there is clause unless set aside, annulled or modified on judicial review. Complainant would appreciate Judicial review so as to prevent further hardship to complainant and her property.

#### 21. Exception

Complainant's rights have been violated by mischaracterizations, misrepresentations of facts and false evidence provided by UGI Utilities as well as incorrect information on pole locations being provided by UGI Utilities, Inc. in Court. UGI has not followed recommendations of the Court. Complainant continues to be violated with the harassment and threats being made by UGI George Bokroch, Senior Tech, if ROW is not provided wires will be moved back to your tree. Complainant is being treated differently since she filed Complaints with the PUC.

22. Exception

If ever a case should be relitigated on issue of false information, mischaracterizations of concepts and options, lack of conclusion with their Options thereby attempting intimidation techniques, bullying, threats and harassment for their lack of respect to Complainant's property, to Complainant's requests for factual information over a period of years, causing unnecessary stress and worry, and additional monetary expenses. Not only was the ROW mischaracterized and the Options provided misleading, but were provided in a way, in a method concocted to gain access to complainant's property by force.

UGI has violated Complainant's rights to her property for many years, ignoring for many years her requests to remedy the problem but instead the trespass grew, harassment and threats, and the subsidiaries of which UGI benefited financially from their use of the utility poles further imposed upon the complainant's rights of ownership while UGI benefited from these ancillary violators.

23. Present Complaint filed is not the same. UGI Trespassed. UGI is now harassing and threatening. Complainant is being treated differently since filing a PUC Complaint. Situation has gotten worse. Stress, worry and concern follow conversations with UGI representative George Bokroch and Walter Grodzki and has become hard to bear with condescending remarks from Legal as well. Moving wires to my specimen tree and damage to my tree bring snickers from Mr. Bokroch in my presence following his threats. In several conversations at my property, Complainant reminded Mr. Bokroch to stop being condescending to me. Complaint has evolved from trespass which still continues to harassment and threats, for added violation to property and rights of Complainant, and to Complainant personally.

24. The fact that UGI Utilities provided non-factual information over so a long period of time and also at Hearing proceedings, then continues to trespass with a make shift modification of guy wires but not to the satisfaction of trespass as that still continues, and to add threats and intimidations to satisfy their plot, with accusations that Complainant has not cooperated which is an insult to the Complainant, but even more hurtful, it is an insult to the Judicial process and all of us participants.

Respectfully submitted,

  
Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, PA 18655  
(570) 542-2346

DATE: August 18, 2022

**Commonwealth of Pennsylvania  
Before the Pennsylvania Public Utility Commission**

In the Matter of:

Francene Tearpock-Martini  
Complainant  
v.

Docket No. C-2022-3033942

UGI Utilities, Inc.  
Respondent

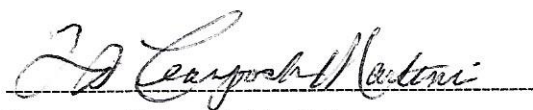
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter upon the parties listed below, in accordance with the requirements of 52 PA Code relating to service by a Participant.

**VIA ELECTRONIC MAIL**

Timothy K. McHugh (I.D. 317906)  
UGI Corporation  
460 N. Gulph Road  
King of Prussia PA 19406  
Tel. (610) 768-3639

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



Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, Pennsylvania 18655  
Tel. (570) 542-2346

DATE: August 18, 2022

C-2022-3033942 Francene Tearpock-Martini v UGI Utilities Inc.

EXHIBIT - D

Photographs of Pole ID numbers

44024 -36283 - Northeast pole SR 11 ROW

44016 -36274 - Southeast pole SR 11 ROW

44025 - 36282 - Southwest pole Furnace Street



25K

44024

36283



44016

36274

50



C-2022-3033942 Francene Tearpock-Martini v UGI Utilities Inc.

EXHIBIT - E

Complainant Exceptions to Initial Decision  
December 4, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document

Upon this participant, listed below, in accordance with the requirements of 52 Pa. Code 5.553 and 5.535

And shall be attached to the filed Exceptions relating to service by participant.

Larry R. Crayne, Esq.  
Attorney for UGI Utilities, Inc.  
238 Johnston Road  
Pittsburgh, PA 15241

Secretary of the Commission  
Commonwealth of PA  
Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

Commission Office of Special Assistants (OSA)  
ra-OSA@pa.gov

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2021

\_\_\_\_\_  
Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, PA 18655

December 04, 2021

Commonwealth of Pennsylvania  
Secretary, Public Utilities Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: C-2021-3027093  
Francene Tearpock-Martini v. UGI Utilities, Inc.  
EXCEPTIONS - INITIAL DECISION - Exceptions

Dear Secretary Rosemary Chiavetta:

INTRODUCTION BY COMPLAINANT.

Complainant, Francene Tearpock-Martini, resides at her property, 56 South Main Street, Shickshinny Borough, PA since October 22, 1977.

My complaint to PUC was predicated upon having the "guy wires" removed from my private property. Somewhere along the line information was misconstrued that I wanted a pole removed. I understand that poles are necessary; however, consideration as to where the "guy wires" are placed needs to be reconsidered so as not to cause me liability and safety issues. There is no ROW to my private property.

What is most important to emphasize is that my many phone calls, emails, and written correspondence to UGI Utilities requesting proof if they had any justification to trespass, were not taken seriously until I filed a Complaint with the Public Utilities Commission. For that let me say Thank You.

I provided the Commission with a (5) page email thread documenting my phone calls to UGI dating from April 03, 2020 through March 20, 2021 along with my Complaint. (Complainant Exhibit (A) G 1; G 2) The Exhibit even provides copy of correspondence to UGI dating as far back to 2005 requesting same, specifically (Complainant's Exhibit G 1). "Guy wires" have been ongoing problem with trespass running from Utility poles by UGI and subsidiaries of UGI who rent space on UGI Utility poles. (Complainant Exhibit (A) G (a) (5).

As an act of good faith, I provided UGI with (3) options/solutions that would rectify the problem with their "guy wires". However, UGI gave these suggestions no attention nor consideration. I am not seeking money but to maintain the Historical significance of the property that I own which is on the National Historic Register, nominated and placed there in 2009.

For your visual conception, it is a unique property that I own surrounded by 3 Streets - SR 11 South Main Street, West Butler Street also a State Road, and Furnace Street a Borough road. (Complainant Exhibits (A) C 1 - 5) My property is separated by the Furnace Borough road of which I own the property both sides of that road. It is at this location where the anchor "guy wires" were placed by UGI Utilities. (Complainant Exhibits (A) C 5; (A) F 1 - 3) The "guy wires" run off the utility pole situated on the

PennDOT ROW off SR 11. The ROW ends at the sidewalk edge of my property and is 60 feet. This ROW will be addressed in detail under "Exceptions - Findings of Fact" to Judge Barnes' Decision following my Introduction.

There are no other poles with "guy wires" on utility poles in my neighborhood except the pole located at the South Main Street/Furnace Street intersection along my property. I continued requesting information over a long period of time through UGI contact person, Walter Grodzki, for proof to access my private property. UGI Utilities and Walter Grodzki provided no proof. In fact, after many months of discussions, Mr. Grodzki finally admitted that he had no proof to provide. (Refer to Complaint filed before the PUC Exhibit (A) G 2 (1).

Further questioning of UGI Walter Grodzki at Hearing why the pole at Complainant's property was chosen for "guy wires", his reply - and it is recorded at Hearing - "because it was near a curve in the road". There are many curves in roads where poles exist with no "guy wires". As a matter of fact, there is the same curve in the road across the same SR 11 highway from Complainant's property with Utility poles, no guy wires. (Complainant Exhibits (A) F 1 -3 with photos). There are Utility poles elsewhere in the community where there are guy wires and no curves whatsoever. I am not being provided with credible or accurate information. Exception. (Refer to Hearing as well as Complaint Exhibit email thread with Mr. Grodzki, (Exhibit (A) G 2 (1).

Following my Complaint to PUC, UGI subsequently created an Option where they would move a completely different pole, a pole not even in the vicinity of their current trespass, which is located on the south side of Furnace Street at the Front of Complainant's Carriage House, move it upward to the Front of Complainant's Arboretum - an area on a straight road - no curves - a pole which would require a ROW from Complainant - at the Front of Complainant's Arboretum. (Complainant Exhibit N 1, N 2, N -3; Exhibit (A) F 1, 2, 3). This Option was very odd presented to me at my property by George Bokrosh, UGI Senior Tech on August 17, 2021.

Further discussion of this so called "Option" will follow in Complainant's Finding of Fact Exceptions, Item 5, page 3, 2nd paragraph, but make no mistake that George Bokrosh made it clear there would be consequences to me and my specimen tree with this Option. George Bokrosh was very specific and told me the electric wire which had been removed on August 5, 2021, would go back "along my specimen tree like years ago when UGI Tim Sutluff chopped at my tree and was penalized by the PUC for trespassing". Yes, he said that to me. I responded directly to Mr. Bokrosh and told him that this Option by UGI was a "threat not an option". This discussion took place at my property on August 17, 2021. Furthermore, Mr. Bokrosh thought this specific Option by UGI was ridiculous and he said so.

Exceptions: Discussion Conclusions of Law.

Exceptions to Honorable Judge Barnes' INITIAL DECISION DISCUSSION, pg. 7, 1st Paragraph' that the Commission F-2008-2022-125 previously ruled on the "same utility pole at issue in this instant case". That would not be correct. They are entirely different poles at different locations along my property which has about 300 feet of Frontage. As previously noted by me, it is a unique property and perhaps complicated to understand from a distance. And although Attorney Crane for UGI made insults at me during the Hearing that I was flaunting my property with 'photography and expanded deeds', the fact of the matter is that I went through a great deal of effort in providing proof of my ownership even

submitting my Deed of Confirmation - Indenture made March 20, 2017, (Exhibit A 1) which was ordered prepared in that manner by the Honorable Judge of the Common Pleas Court, Luzerne County. I provided many photographs both old in my archives and recent of all views in various locations along my property, where Utility poles were moved and relocated over a period time, to be discussed so as to eliminate any misunderstandings. I did not want for the PUC Commission or anyone including Attorney Crane to be inconvenienced with need to travel to see the matters first hand. Pictures can be worth a thousand words.

Exception to Conclusions of Law: UGI Utilities is not "an inadvertent encroachment" (Judge Barnes' Conclusions of Law Item 13, pg. 10.) Complainant avers it is deliberate trespassing on my property by UGI Utilities and their subsidiaries. They were notified repeatedly over that "very long time". UGI Utilities is deliberately trespassing on my property and I have asked them for many years to remove their wires and not trespass or otherwise provide proof of access. They provided nothing and continued to trespass. (Please refer to Complainant's Complaint with attachments Exhibit (A) G, G 2 (1) which includes communication email thread April 5, 2020 through March 20, 2021.

UGI Utilities is violating my property rights which may not be your jurisdiction (Discussion, 3rd Paragraph Judge Barnes pg. 7 Discussion); however, they have no easements nor any other permission to trespass on my property which I have established through Deeds, Surveys, (Exhibits: (A) A 1; H 1,2,3,4,5, 6) and I see it as a trespass violation of PUC regulations and jurisdiction. Their guy wires are trespassing along with their employees and subsidiaries. Before proceeding to other level Courts, I am in agreement with the Honorable Judge Barnes that negotiations should be entertained; however, I have been there done that with UGI Utilities for a good number of years to no avail. I must protect my property.

Complainant provided (3) options which were totally dismissed by Attorney Crane for UGI Utilities. Complainant's Options were discussed at Hearing. Complainant's Options were safe, cost effective and require no trespassing. Complainant's Option 3 would even eliminate a pole which would save UGI Utilities many unnecessary expenses on pole maintenance.

Complainant's Options - # 1. Move the utility pole across the highway where PennDOT has ROW and plenty of space for their guy wires. Complainant's Option # 2. Keep utility pole at its current location on PennDOT ROW. Use a stronger pole to carry their load increase - a pole that won't require "guy wires". Complainant's Option # 3. Continue the electric where poles and wires are already established running from South Main Street to W. Butler Street, to Church Street, to Furnace Street. Correct the minor 'gap' that Walter Grodzki, UGI Engineer testified to at Hearing when questions by Complainant on her Option 3. Complainant's (3) Options are safe, cost effective, require no ROW, easements or trespassing and even eliminate a utility pole thus saving UGI money in pole maintenance costs.

Complainant has outlined the Exceptions more thoroughly under "Exceptions, Finding of Fact" relative to "Exceptions Discussion Conclusion of Law" outlined herein. Therefore, Complainant is filing this appeal in this manner for your review. Thank you.

## COMPLAINANT EXCEPTIONS, REPLIES TO EXCEPTIONS - INITIAL DECISION

### Finding of Fact Items - Exceptions

Item 1 - pg. 2 - No exception.

Item 2 - pg. 2 - No exception.

Item 3 - pg. 2 - Exception - Complainant Exhibits for Historic Significance should include Complainant's Exhibits (A) D 1, 2, 3, 4, 5; E 1 - 2; as well as K 1.

Item 4 - pg. 3 - No Exception.

Item 5 - pg. 3 - Exception(s) Respondent R - 4 Exhibit is not accurate nor relevant. Respondent R -4 Exhibit represents 1700's before land and streets (265 acres) were even plotted out and developed. Warrior paths of Native Americans existed in 1700's. Borough became incorporated the year, 1861, with plots, lots and streets dedicated.

Pole and single-phase line was changed by UGI August 5, 2019 and transferred to an existing Furnace Street pole following a significant double rig trucking accident that was hauling scrap metal and other contaminants, both corners of South Main and Furnace Streets, damages to claimant's property stone walls, landscaping, including damages to tree lines, curbs, sidewalks and two utility Complainant's Chubb Insurance and Complainant poles on PennDOT ROW - costs absorbed by Complainant's Chubb Insurance and Complainant. PennDOT and Borough do not acknowledge costs of maintenance on their ROW. By some Borough Ordinance, Complainant has that responsibility for any maintenance and repairs regardless of accidents not caused by Complainant. (Reference Mark Yeager, County Supervisor, PennDOT; Sam Galante, County Manager, PennDOT.)

Item 6 - pg. 3 - Exception. Respondent R- 6. Unable to read exhibit illegible small print. Fact of the matter is the Utility pole over time changed various locations, sizes, and loads, since 1951 to include present "guy wires" which were non-existent at a prior time in history but now installed outside of ROW onto Complainant's property. No one, not even PennDOT, has permission nor has the authority to give unbridled ROW permission onto others to trespass. UGI Utilities are trespassing on Complainant's property with their guy wires and their employees. PennDOT ROW ends at sidewalk edge.

(Exception. Respondent Exhibits R 5 through R 8 is a compilation of non-factual and irrelevant data meant to distract and mislead real information. R -5 page 1 portrays a Cover Display dated 1986 from Reilly Associates. R - 6 is not legible. R -7 displays a recent photo at corner of Complainant's South Main/Furnace Street property. Path lights and Cypress trees can be seen on the photo which were installed and planted in 1916 by complainant so it dates the photo after 1916. R -8 is a photo not taken anywhere near or of Complainant's property and is irrelevant.)

Item 7 - pg. 3 - Exception. Property is at located at corner of SR 11/South Main Street and Furnace Street. (PennDOT) SR11 has a 60 feet ROW not a 66 feet ROW; Furnace Street, a Borough road, has a "variable width of ROW". Variations not determined. Although a Utility Pole is located at SR 11 location approximately 12 feet from Furnace Street corner, PennDOT ROW ends at the sidewalk edge to

Complainant's private property. PennDOT's ROW jurisdiction at SR 11 has no jurisdiction on Furnace Street which is a Borough road with Variable width ROW undetermined. Complainant provided current Certified Land Surveys. (Complainant's (A) Exhibits - A, C, G, H, J.) Respondents Exhibit R -4 is obsolete and not relevant as further noted in Complainant's Exceptions Items 5 and 6.

Item 8 - pg. 3 - Exception. Furnace and Church Streets are serviced by poles and lines running from South Main Street, to Butler Street, to Church Street, and Furnace Street with a very minor variation which "gap" was explained at Hearing by Walter Grodzki for UGI (Refer to Hearing) and can be adjusted

and eliminate that pole. (See Complainant's (A) Exhibits B 1, 2, 3, 4; F 1, 2, 3); Complainant's Testimony at Hearing on Complainant's Option One, Two and Three, further delineated in correspondence September 15, 2021, September 21, 2021 and September 27, 2021 with additional Exhibits requested and accepted into record by Honorable Judge Barnes.

Item 9 - pg. 3 - Exception. Respondent's Exhibit R 7 photo does not accurately depict car accident of pole of 1991 accident. Respondent's Exhibit R - 7 is a very current and recent photo. At time of Accident of 1991, there were building structures on the property right adjacent to the corner curb. (Complainant's (A) Exhibits H 1 through 6.) There were no 'guy wires' or they would have been inside someone's home. All of that was removed through efforts of present owner of property, i.e. Complainant. Respondent's Exhibit R - 7 photo portrays Complainant's current "Lands" Landscaped with path lights and shrubbery. R - 7 does not portray 1991. There was no survey provided by a Certified Land Surveyor in Item 9. Respondent's Exhibit R 6, although not clear to read small print, it is clear enough to note the Exhibits are sketch maps not Certified Land Surveys with Official Seal. Complainant is the only participant in this matter to provide current Certified Land Surveys.

Item 10. - pg. 3 - Exception: Respondent's photo in Exhibit R - 8 is not of Complainant's property. It has no relevance to Complainant's property.

- pg. 3 - Exception: M Exhibits by Complainant are also mischaracterized in the Decision. There is no evidence that the item in the photographs is Complainant's property pin. Item characterized by UGI as "Complainant's pin" appeared out of nowhere after all these years and was not on Complainant's property as of 09 08 21. Photograph taken on 09 08 21 of property by Complainant exact location shows no pin. Note also that surface around metal type item found by UGI on 09 10 21 is smooth dirt surface and does not show anything above grade until 09 10 21. On 09 10 21, a phone call to Complainant by UGI George Bokroch that UGI found complainant's "property pin" is mischaracterization. (Complainant's Exhibits M 1, M 2, M 3). Mischaracterizations described in detail September 15, 2021 correspondence and Exhibits M 1, M2, M 3 submitted in accordance with Judge Barnes instructions for submissions post Hearing.)

Item 11 - pg. 3 - Exception. UGI R 1 Exhibit is not a survey from a Certified Land Surveyor. It is a sketch from UGI Utilities engineering department.

Item 12 - pg. 3 - Exception. - Simply because someone trespasses 'for a very long time' does not make it right to encroach or trespass. Attachment of the Aerial guy wires encroaching are at land level - Land of Francene Tearpock-Martini.

Furthermore, UGI Utilities is not "an inadvertent encroachment" (Judge Barnes' Conclusions of Law Item 13, pg. 10.). Complainant avers it is deliberate trespassing on private property by UGI Utilities and their subsidiaries. They were notified repeatedly over that "very long time" to remove the guy wires and cease trespass or provide proof to access. UGI has provided no proof. They are trespassing and in violation. A PennDOT ROW is not beyond limits and does not provide unbridled access to Complainant's private land.

Item 13 - pg. 4 - Exception. Respondent Exhibit R 1 is not a Certified Land Survey. It is a sketch map from UGI Utilities engineering Department. The Utility Pole is located on PennDOT ROW. It is not on

Furnace Street. The guy wires are located on Complainant's private property. There is not any defined ROW on Furnace Street - variable width yet to be established by a Certified Land Surveyor. Complainant has had 3 separate surveys by Certified Land Surveyors with no determined width at the Furnace Street. The guy wires are on the private property of Francene Tearpock-Martini and in trespass. The guy wires are not in a public right of way. (Complainant's (A) Exhibits H 1 through 6).

Item 14 - pg. 4 - No Exception.

Item 15 - pg. 4 - Exception. George Bokrosh is not a Certified Land Surveyor. Mr. Bokrosh has no rights to trespass on private property owned by Francene Tearpock-Martini. Property is posted; no trespassing. Complainant is the taxpayer owner of said property location in trespass.

Item 16 - pg. 4 - Exception. George Bokrosh provided (2) Options not (3) Options.

Item 17 - pg. 4 - Exception. Option 1 by UGI would require trespass on Complainant's private property. (Refer to UGI sample photograph of contraption - Respondent's Exhibit R 8). It would be a safety hazard on PennDOT ROW, a safety hazard to the Public who utilize the Public walks, and to Francene Tearpock-Martini whose responsibility is to maintain the sidewalks, curbs, of ROW. This Option is unreasonable. It would require approval by PennDOT, Borough as well as Complainant who will object to added liability.

Item 18 - pg. 4 - Exception. "Option" continues to be mischaracterized as an "Option" - UGI on August 5, 2021, relocated single phase wire to location of pole in front of Complainant's Carriage House on Furnace Street. So as not to be repetitive, please (refer to Exception by Complainant Item 5, 2nd paragraph, for details on wire transfer.) (Refer to Complainant (A) Exhibit F) Pole in Front of Carriage House.)

Item 19 - pg. 4 - Exception. There were 2 Options, not 3 Options, provided by UGI. Referencing this Item 19, (Respondent's Exhibit R 3) would require construction and maintenance of a contraption that would interfere with the public walkway. They obviously would not be allowed on my private property so they would depend upon their ROW through PennDOT at that location. Complainant is responsible for maintenance at the public sidewalks; complainant is responsible for snow removal at that location, cutting grass at the tree lawn, weeding, trimming, public pedestrians and particularly children walk to the school bus at that location. It would create a safety hazard at that location. (See a photo example

of their contraption Respondent's Exhibit R 8). As anyone can see, the guy wires still run at an angle outward. They would not be allowed to run their guy wires onto Complainant's property and continue to trespass.

Furthermore, UGI subsidiaries utilize that utility pole because UGI rents use of their poles to others who also take liberties and trespass. There would be no one to oversee this activity just as happens presently when utility employees run up and down Complainant's private property. (See Complainant's Exhibit (A) G 2 (1) to Formal Complaint.) There are liability issues. Complainant has recommended they use a bigger stronger utility pole at their PennDOT ROW to support their increased loads (or) move their pole across the highway SR 11 at another PennDOT ROW location. Complainant has enough maintenance responsibility to care for with 300 feet of sidewalks all frontage and public. Complainant can't patrol 24/7 with all that activity and trespass. It would be a liability to Complainant. Complainant is responsible for maintenance of sidewalks and curbs through Borough Ordinance. Complainant is still paying for an accident that occurred there that was not caused by Complainant but by an out of control double rig truck driver carrying scrap metal and other contaminants.

Item 20 - pg. 4 - No Exception.

#### Conclusions of Law - Exceptions

Item 1. No Exception.

Item 2. No Exception.

Item 3. No Exception.

Item 4. No Exception.

Item 5. No Exception.

Item 6. No Exception.

Item 7. No Exception.

Item 8. No Exception.

Item 9. No Exception.

Item 10. Exception. While property rights and valid ROW agreements may be argued in the Courts of Common Pleas, case at hand with the PUC, Complainant has provided proof of ownership through Deeds and Certified Land Surveys, title searches; (A) Exhibits A, H 1 through 6, whereas violators of trespassing have provided no proof by way of deed, title, or anything even remotely current to present evidence and this case.

Item 11. Exception. While the UGI may have a statutory right to occupy streets, highways and other public ways; they do not have access to private property outside the ROW jurisdiction or perimeters.

Item 12. No Exception.

Item 13. Exception. The Arial encroachment off of Utility Pole is not an "inadvertent encroachment". It is a deliberate violation. UGI Utilities has no right to access private property and is trespassing. UGI Utilities was notified for a "very long time" that they were trespassing. Complainant asked UGI repeatedly for a long period of time to provide proof of access. UGI utilities disregarded requests for proof and in fact admitted that they had no proof. (Complainant's Exhibits made part of Formal Complaint (A) Exhibits G 2, G 2 (1). Additionally, testimony at Hearing admission by UGI representative Grodzki admission of trespass. (Note Complainant's Exception to Finding of Fact Item 12). Exception to Conclusions of Law Item 13 has also been incorporated into Complainant's Exceptions to Findings of Facts (Item 12).

Furthermore, although guy wires are being characterized as Arial, encroachment also exists at ground level where they are significantly attached at surface to Complainant's Land. In addition, UGI utilities and their subsidiaries have continued to run up and down Complainant's private land trespassing even when asked to leave private property; even when repeatedly asked for proof to access, and Complainant requests were ignored. Property is posted as no trespassing.

Item 14. Exception. Public Right of Way does not provide unbridled access to private property. Pole named in this case is not the same pole nor even the same ROW location of case Opinion and Order entered June 19, 2009. There were penalties to UGI Utilities by PUC in 2009 for trespass to Complainant's property. There is permanent damage to Complainant's property as a result of that trespass.

15. Exception. Complainant has satisfied burden and has demonstrated that UGI has violated the Public Utility Code, a Commission order or regulation since issue in Complaint Filed was "guy wires" and not the Utility Pole. (Refer to Complaint filed with PUC by Complainant.)

Respectfully submitted,



Francene Tearpock-Martini

56 South Main Street  
Shickshinny PA 18655  
(570) 542-2346

Cc: Honorable Judge Elizabeth H. Barnes  
Attorney Larry R. Crane for UGI Utilities

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document

Upon this participant, listed below, in accordance with the requirements of 52 Pa. Code 5.553 and 5.535

And shall be attached to the filed Exceptions relating to service by participant.

Larry R. Crayne, Esq.  
Attorney for UGI Utilities, Inc.  
238 Johnston Road  
Pittsburgh, PA 15241

Secretary of the Commission  
Commonwealth of PA  
Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

Commission Office of Special Assistants (OSA)  
ra-OSA@pa.gov

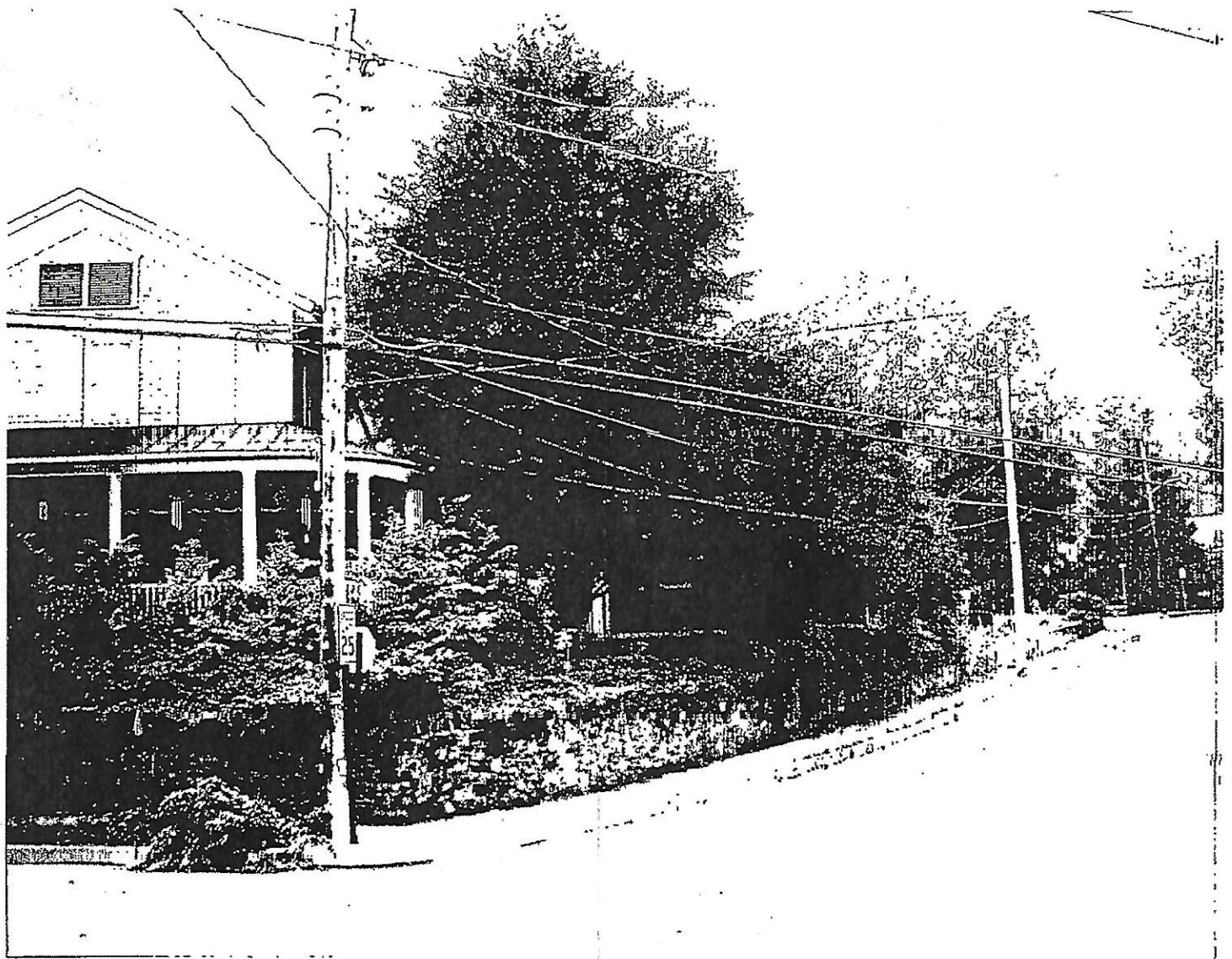
Dated this 4<sup>th</sup> day of December 2021

  
Francene Tearpock-Martini  
56 South Main Street  
Shickshinny, PA 18655

C-2022-3033942 Francene Tearpock-Martini v UGI Utilities Inc.

EXHIBIT - F

Photograph copy of damaged tree 2008  
UGI Exhibit G, Complainant's Exhibit F



C-2022-3033942 Francene Tearpock-Martini v UGI Utilities Inc.

EXHIBIT - G

Initial Decision Honorable Judge Barnes  
November 16, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock Martini	:	
	:	
v.	:	C-2021-3027093
	:	
UGI Utilities, Inc.	:	

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

**INTRODUCTION**

This decision denies a formal complaint filed by a customer of an electric distribution company (EDC) for failure to satisfy her burden to demonstrate that the EDC has violated the Public Utility Code, a Commission order, a regulation, or a Commission-approved tariff of the company with regard to the installation of a replacement utility pole in a public right-of-way that is not on her property.

**HISTORY OF THE PROCEEDING**

On July 5, 2021, Francene Tearpock Martini (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc., (UGI or Respondent) averring that the company had anchor wires on her property that were a safety hazard and that the company has no right-of-way on her property.

On July 7, 2021, the Complaint was served upon Respondent. On July 27, 2021, Respondent filed an answer in response to the complaint. In its answer, UGI admitted it provided

electric service to Complainant but denied that its utility pole and anchor were outside a municipal right-of-way except for a 2.5-foot ariel encroachment of the electric facilities across the corner of Complainant's property. UGI averred that this small encroachment is not a safety hazard within the meaning of the Public Utility Code.

On July 30, 2021, Complainant filed a reply insisting UGI has no right of way on her property, that the anchor wires were installed on her property without her consent, and that the anchor wires create a safety hazard and liability to her property.

After a failed mediation attempt, on August 4, 2021, a Hearing Notice was issued scheduling a hearing for September 14, 2021. On August 6, 2021, a Prehearing Order was issued setting forth various rules that would govern the hearing.

The evidentiary hearing was held on September 14, 2021, as scheduled. Ms. Tearpock Martini appeared *pro se* and sponsored one statement and ten exhibits, several of which were admitted into the record. Larry Crayne, Esquire appeared on behalf of UGI and presented two witnesses who sponsored eight exhibits that were admitted into the record. A transcript of 137 pages was created. After the hearing, Complainant filed post-hearing exhibits K-N, that over the objection of UGI were also admitted into the record on October 29, 2021. (*see Order Admitting Exhibits Into the Record*). The record closed on October 29, 2021. This case is ripe for a decision.

#### FINDINGS OF FACT

1. The Complainant in this case is Francene Tearpock Martini.
2. The Respondent in this case is UGI Utilities, Inc., an electric distribution company operating in Pennsylvania.
3. The service address is a national historical residence located at 56 South Main Street, Shickshinny, Pennsylvania. Tr. 116, Complainant Exhibit K-1.

4. Walter Gradzki is a project engineer performing distribution engineering projects with UGI Utilities, Inc. Tr. 40.

5. Between the roadway called Furnace Street and Complainant's property line there is a utility pole 44024-36283 (pole 24 over 83), constructed by UGI Utilities, Inc. with a single phase line coming off the pole heading up Furnace Street. Tr. 48, Respondent Exhibit R-4.

6. The pole 24 over 83 is within a public Pennsylvania Department of Transportation (PennDOT) right of way and construction of the pole was permitted by PennDOT before it was originally installed in 1951. Tr. 69-70, Respondent Exhibit R-6.

7. PennDOT has a 66-foot right of way, 40 feet of which is for the borough road of Furnace Street, but the right of way extends beyond the road by approximately 13 feet on each side. Tr. 68-69, Respondent Exhibit R-4.

8. The single phase primary line services customers along Furnace Street and also Church Street. Tr. 48.

9. In 1991, there was a car accident at the pole and it was replaced within the PennDOT right of way, approximately 12 feet from Furnace Street. Tr. 70-72, Respondent Exhibits R-6 and R-7.

10. Complainant's property pin is located farther from Furnace Street than the pole, approximately six inches behind the sidewalk and two feet two inches to the right of a sidewalk concrete slab. Tr. 78-79, Respondent Exhibit R-8, Complainant Exhibits M-2 and M-3.

11. The anchor guy on this utility pole crosses 2.5 feet aerially over the corner of Complainant's property. Tr. 44-47, Respondent Exhibit R-1.

12. The ariel encroachment off of pole 24 over 83 has been there a very long time supporting a main line. Tr. 47-48, 80.

13. The utility pole and anchor that go into the ground are in a public right of way on Furnace Street and not on Complainant's property. Tr. 46, Exhibit R-1.

14. George Bokrosh is a senior engineering technician with UGI. Tr. 109.

15. Mr. Bokrosh attempted to take measurements on Complainant's property but was asked to leave the property by Complainant on or about May 19, 2021. Tr. 110, 122.

16. Mr. Bokrosh engaged in several discussions with Ms. Tearpock Martini and offered her three options to resolve her complaint prior to the hearing. Tr. 110.

17. As option 1, UGI has offered to relocate the anchor guy and create a sidewalk anchor guy that would leave the pole then hit a bar attached to the pole with the line coming straight down the pole, keeping the whole entire anchor guy within the public road right-of-way. Tr. 48-49.

18. Alternatively, UGI offers to relocate the single phase primary line from pole 24 over 83 to pole 16 over 74, located closer to Complainant's home at the intersection on the other side of Furnace Street. Tr. 50-51, Respondent Exhibit R-2.

19. As a third alternative to remove the encroachment UGI offers to alter the anchor guy located in that general area by shortening it with a sidelock anchor guy. Tr. 53-54, Respondent Exhibit R-3.

20. The parties have not agreed to an option for removing the encroachment on Complainant's property or in negotiating terms for an easement. Tr. 1-125.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a

complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. Ms. Tearpock Martini has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa. Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa. Cmwlth. 1982).

On appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961); and Pa. Dep’t of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa. Cmwlth.1984).

In the instant case, Ms. Tearpock Martini would like anchor guy wires attached to a utility pole installed by UGI to be moved because they are allegedly a safety hazard and liability to her property. During the hearing Complainant requested the utility pole be moved to the other side of Furnace Street and Route 11. She averred that she has been in numerous conversations with UGI but that the anchor wires remain on her property. She asked Mr. Bokrosh to leave her property because he wasn’t a surveyor. Complainant ordered Mr. Bokrosh

from her property when he attempted to take measurements to remediate the ariel encroachment on the corner of Complainant's property.

In response, UGI presented the testimony of Walter Grodzki and George Bokrosh, engineers who testified that UGI is willing to obtain an easement or remove the anchor guy wire that encroaches Ms. Tearpock Martini's property. UGI has no easement on the property.

Ms. Tearpock Martini's complaint must be denied because although she succeeded in showing by a preponderance of the evidence that UGI has anchor guy wires on her property without a right-of-way, Complainant has failed to show the 2.5 foot ariel encroachment over the corner of her property is a safety hazard or property liability concern. She has failed to prove that she is entitled to the relief that the utility pole be moved across Route 11. Although the pole itself does not have to be removed, the guy wires should be removed from her property. *See, Milkie, supra*. Further, the three options UGI has offered Complainant are reasonable and within the managerial discretion of the utility. See Finding of Fact No. 17.

The Commission held in an earlier complaint proceeding involving the same parties:

As indicated by the ALJ, UGI has a statutory right to occupy streets, highways and other public ways for the purpose of placing, maintaining and removing aerial, surface and subsurface public utility facilities thereon or therein. 15 Pa. C.S. §1511(e). The ALJ also stated as follows:

UGI's placement of its poles in public ROW is consistent with utility practice in that, historically, electric utilities in Pennsylvania have been permitted to occupy public ROWs free of charge, subject to the government's power to regulate for the benefit of the public. See, e.g., PECO Energy Company v. Pa. P.U.C., 568 Pa. 39, 791 A.2d 1155 (2002); Delaware River Port Authority v. Pa. P.U.C., 393 Pa. 639, 145 A.2d 172 (1958).

Upon review of the record, we concur with the ALJ that the Complainant has not met her burden of proof regarding the unreasonableness of UGI's placement of the pole in the ROW.

Francene Tearpock-Martini v. UGI Utilities, Inc., F-2008-2022125, Opinion and Order entered June 19, 2009 (internal citations omitted). Thus, the Commission previously ruled that the same utility pole at issue in the instant case is in a public right of way and not an unreasonable placement of the pole.

Considering this precedent, I find no violation of any Commission Order, regulation, or statute and I am not directing the utility to proceed with implementation of one of the three options described by the engineers at the hearing. However, I agree with UGI that their preferred option seems a reasonable method to remove the ariel guy wires from Complainant's airspace. I encourage the parties to work together to implement the removal of the wires. The utility received permits from PennDOT to construct the utility pole within PennDOT's right-of-way adjacent to Complainant's property. Complainant's property pin is not closer to Furnace Street than the utility pole. The pole is not on Complainant's property, only the ariel guy wires encroach on 2.5 feet of air space on Complainant's property near the sidewalk, and I am not persuaded that this is a safety or liability hazard for the property owner who testified her landscaper was able to blow mulch below the encroachment without incident. The property pin was buried under a foot of mulch.

Further, it is well established that the Commission only has those duties, powers and responsibilities as expressly, or by necessary implication, given to it by the General Assembly and that the Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super 1945). Allegations relating to property rights and the interpretation of a valid right-of-way agreement are exclusively within the jurisdiction of the Courts of Common Pleas. *See e.g.*, Fairview Water Co. v. Pa. Pub. Util. Comm'n, 502 A.2d 162 (Pa. 1985) (the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement). *See also*, Lasko v. Windstream Pa., LLC, Docket No. C-2010-2217869 (Final Order dated April 1, 2011); Perrige v. Metro. Edison Co., Docket No. C-00004110 (Order entered July 3, 2003); Fiorillo v. PECO Energy Co., Docket No. C-00971088 (Order entered September 15, 1999).

There are some matters involving easements beyond the scope and validity of the easement over which the Commission has jurisdiction. *See e.g., W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa. Cmwlth 1990) (affirming the Commission's decision to impose a fine on the utility for the removal of 74 trees from a customer's property). However, the facts presented by Complainant present precisely the type of issues regarding easements that the Commission lacks jurisdiction to consider. Therefore, although UGI has attempted to obtain an agreed upon easement from Complainant regarding her property, the Commission does not have jurisdiction to direct an easement be formed.

In conclusion, Complainant has failed to satisfy her burden to demonstrate that UGI has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the installation of a replacement pole in a right-of-way of PennDOT that is not on her property. UGI has attempted to remedy an inadvertent ariel encroachment of 2.5 feet of guy wires on the corner of Complainant's property; however, Complainant has not agreed with such efforts and has ordered UGI's personnel off of her land. I encourage the parties to agree to implement one of UGI's proposed options in order to cause removal of the guywires on Complainant's airspace, and to resolve this dispute.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (PA. Super. 1961); and Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa. Cmwlth.1984).

9. The Commission only has those duties, powers, and responsibilities as expressly, or by necessary implication, given to it by the General Assembly and that the Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super 1945).

10. Allegations relating to property rights and the interpretation of a valid right-of-way agreement are exclusively within the jurisdiction of the Courts of Common Pleas. Fairview Water Co. v. Pa. Pub. Util. Comm'n, 502 A.2d 162 (Pa. 1985).

11. UGI has a statutory right to occupy streets, highways and other public ways for the purpose of placing, maintaining and removing aerial, surface and subsurface public utility facilities thereon or therein. 15 Pa. C.S. §1511(e).

12. Pole 24 over 83 is within a PennDOT right-of-way and not on Complainant's property; however there is a 2.5 foot ariel encroachment of guy wires on Complainant's property. 15 Pa. C.S. §1511(e).

13. The ariel encroachment off of pole 24 over 83 is an inadvertent encroachment that has been there a very long time supporting a main line and is not a safety hazard. 66 Pa. C.S. §1501.

14. UGI's placement of its pole 24 over 83 in a public right-of-way is consistent with utility practice in that, historically, electric utilities in Pennsylvania have been permitted to occupy public right of ways free of charge, subject to the government's power to regulate for the benefit of the public. See, e.g., Francene Tearpock-Martini v UGI Utilities, Inc. F-2008-2022125 (Opinion and Order entered June 19, 2009), citing PECO Energy Company v. Pa. Pub. Util. Cmm'n, 791 A.2d 1155 (Pa. 2002); and Delaware River Port Authority v. Pa. Pub. Util. Cmm'n, 145 A.2d 172 (Pa. 1958).

15. Complainant has failed to satisfy her burden to demonstrate that UGI has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the installation of a replacement utility pole in PennDOT's public right-of-way. Francene Tearpock-Martini v UGI Utilities, Inc. F-2008-2022125 (Opinion and Order entered June 19, 2009), citing PECO Energy Company v. Pa. Pub. Util. Cmm'n, 791

