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File #: 126894

January 18, 2023

VIA ELECTRONIC FILING


Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Kenneth Singh v. UGI Utilities, Inc. – Gas Division
Docket No. C-2022-3037401

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of UGI Utilities, Inc. – Gas Division in response to the Complaint of Kenneth Singh in the above-referenced proceeding. Copies are being provided per the Certificate of Service.

Respectfully submitted,



Megan E. Rulli

MER/dmc
Attachment

cc: Certificate of Service

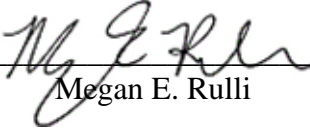
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL ONLY

Kenneth Singh
130 Donald Avenue
Middletown, PA 17057
Ksingh71@verizon.net

Date: January 18, 2023



Megan E. Rulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Singh,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3037401
	:	
UGI Utilities, Inc. – Gas Division,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Dated: January 18, 2023

Counsel for UGI Utilities, Inc. – Gas Division

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Singh,	:	
	:	
Complainant,	:	
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v.	:	Docket No. C-2022-3037401
	:	
UGI Utilities, Inc. – Gas Division,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
UGI UTILITIES, INC. – GAS DIVISION TO THE
COMPLAINT OF KENNETH SINGH**

AND NOW, comes UGI Utilities, Inc. – Gas Division (“UGI Gas” or “Company”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Complaint filed by Kenneth Singh (“Complainant”) be dismissed in its entirety as against UGI Gas. In support thereof, UGI Gas states as follows:

I. BACKGROUND

1. UGI Gas is a “public utility” and a “natural gas distribution company” as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2202, subject to the regulatory jurisdiction of the Commission.

2. UGI Gas provides natural gas distribution service to approximately 650,000 customers, located primarily in south, central, and northeastern Pennsylvania.

3. By Secretarial Letter dated December 29, 2022, UGI Gas was served with the above-captioned Complaint. In his Complaint, the Complainant alleges that UGI Gas should have fulfilled the Complainant's November 2022 request to switch to an alternative natural gas supplier ("NGS") prior to the Company's scheduled switch date of January 19, 2023. (See Complaint ¶¶ 4-5.)

4. UGI Gas herein files these Preliminary Objections to the Complaint. For the reasons explained below, UGI Gas respectfully requests that the Complaint be dismissed in its entirety and with prejudice as against UGI Gas for legal insufficiency pursuant to Section 5.101(a)(4) of the Commission's regulations, 52 Pa. Code § 5.101(a)(4).

II. STANDARD OF REVIEW

5. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

6. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

7. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. See *Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. See *Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 - THE COMPLAINT IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED WITH PREJUDICE BECAUSE UGI GAS CANNOT BE HELD LIABLE FOR ADHERING TO ITS COMMISSION-APPROVED TARIFF

8. UGI Gas incorporates by reference Paragraphs 1 through 7 as if fully set forth herein.

9. The Complaint is legally insufficient and should be dismissed with prejudice because UGI Gas cannot be held liable for adhering to its Commission-approved tariff.

10. As a matter of law, the 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 Pa. PUC LEXIS 19, at *8 (Order entered Feb. 8, 1990) (citing *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976)).

11. When “the Complaint fails to state a claim against the named respondent upon which the Commission may grant relief,” the Complaint is “insufficient as to substance,” and the “Respondent is entitled to judgment as a matter of law.” *Stabley v. Phila. Gas Works*, Docket No. F-2010-2186368, 2010 Pa. PUC LEXIS 231, at *6 (July 29, 2010) (Initial Decision), *adopted without modification*, (Order entered Oct. 1, 2010); *see Coggins v. UGI Cent. Penn Gas Inc.*, Docket No. C-2012-2312796, 2012 Pa. PUC LEXIS 1497 (Sept. 10, 2012) (Initial Decision), *adopted without modification*, (Order entered Nov. 9, 2012).

12. Additionally, under Section 3303(a) of the Public Utility Code, “No public utility, nor any officer, agent or employee thereof, shall be liable for any penalty or forfeiture, or be subject to any prosecution, on account of demanding, collecting, or receiving any rate for any service, or for enforcing any regulation, or practice when such rate, regulation, or practice is contained in a tariff properly filed with the commission, and posted or published as herein provided, and is applicable by the terms thereof at the time to such service although such rate, regulation, method or practice may be found by the commission to be unjust or unreasonable.” 66 Pa. C.S. § 3303(a) (emphasis added).

13. On November 29, 2022, UGI Gas received notice that the Complainant had elected to receive natural gas supply service from an NGS, Shipley Energy Company (“Shipley Energy”).

14. UGI Gas notified the Complainant by letter dated November 30, 2022, that the Complainant would begin receiving natural gas supply service from Shipley Energy on January 19, 2023.

15. The provision of the Company's tariff that governs NGS enrollment states that "for enrollments received and processed after the 15th of any calendar month, the customer will be switched to Rate Schedule RT and NT," which are the residential and small commercial rates schedules for shopping customers, "where the customer does not respond within 5 days from the Company's mailing of a letter confirming the election to be served by the Choice Supplier, on the Customer's regularly scheduled meter reading date in the second calendar month following the month the enrollment information was received and processed." *See* Supp. No. 37 to UGI Gas – Pa. P.U.C. No. 7S, Second Revised Page No. 125.

16. The Company received notice of the Complainant's election to switch to Shipley Energy after the 15th of the month, on November 29, 2022.

17. The second calendar month following the month the Company received and processed the Complainant's enrollment information is January 2023.

18. January 19, 2023 is the Complainant's regularly scheduled meter reading date for January 2023.

19. Thus, by planning to switch the Complainant from UGI Gas's default service to Shipley Energy's natural gas supply service on the Complainant's January 2023 scheduled meter reading date, UGI Gas has complied with its Commission-approved tariff.

20. UGI Gas cannot be found liable for adhering to practices contained in its Commission-approved tariff, *i.e.*, executing the Complainant's switch to Shipley Energy on January 19, 2023. *See id.*

21. The sole allegation contained in the Complaint is that UGI Gas should have carried out the Complainant's switch date to Shipley Energy prior to January 19, 2023. (*See* Complaint ¶¶ 4-5.) The Complainant alleges alternatively throughout his Complaint that UGI Gas should have switched his NGS "immediately," within "3 business days," or "at the latest by the December meter reading." (Complaint ¶¶ 4-5.)

22. However, UGI Gas's planned switch date of January 19, 2023 complies with the applicable provisions of its Commission-approved tariff. *See* Supp. No. 37 to UGI Gas – Pa. P.U.C. No. 7S, Second Revised Page No. 125.

23. As noted previously, UGI Gas cannot be held liable for complying with its Commission-approved tariff. *See* 66 Pa. C.S. § 3303(a).

24. Therefore, the Complainant has failed to state a claim against UGI Gas upon which the Commission may grant relief. *See Rok*, 527 A.2d at 214; *Stilp*, 910 A.2d at 781.

25. Accordingly, the Complaint should be dismissed in its entirety and with prejudice as against UGI Gas.

B. PRELIMINARY OBJECTION NO. 2 - THE COMPLAINT IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED WITH PREJUDICE BECAUSE UGI GAS'S ACTIONS COMPLIED WITH THE COMMISSION'S SWITCHING REQUIREMENTS

26. UGI Gas incorporates by reference Paragraphs 8 through 25, *supra*, as if fully set forth herein.

27. The Complaint is legally insufficient and should be dismissed with prejudice because the Company's actions complied with the Commission's requirements governing switching customers' natural gas supply service.

28. Section 59.93(2) of the Commission’s regulations imposes a 10-day waiting period between a customer’s request to switch to a new NGS and the date a natural gas distribution company (“NGDC”) may execute the switch to the new NGS. *See id.*

29. Relatedly, Section 59.94 of the Commission’s regulation provides that “[w]hen a customer has provided the NGS with oral confirmation or written authorization to change NGSs, the NGDC shall make the change at the beginning of the first feasible period following the 10-day waiting period . . .” *See Id.* § 59.94.

30. The Commission has since modified the switching timeframe requirements set forth in those regulations.

31. Effective September 7, 2021, the Commission extended its waiver of Sections 59.93(2) and 59.94 of the Commission’s regulations until October 25, 2024. *Investigation of Pennsylvania’s Retail Natural Gas Supply Market – Interim Guidelines Regarding Standards For Changing a Customer’s Natural Gas Supplier*, Docket No. I-2013-2381742 (Tentative Order entered Aug. 26, 2021) (“*Tentative Order*”), *became final without further action*, Docket No. I-2013-2381742 (Secretarial Letter dated Oct. 19, 2021).

32. Under those waivers, the Commission shortened the 10-day waiting period to a 5-day waiting period. *See Tentative Order*, Appendix A.

33. The Commission also modified the switching time frame of 52 Pa. Code § 59.94, stating that “[w]hen a customer has provided the NGS with oral confirmation or written authorization to change NGSs, the NGDC shall make the change at the beginning of the first feasible billing period following the 5-day waiting period . . .” *Id.* (emphasis added).

34. Accordingly, the Commission currently requires that NGDCs provide a 5-day waiting period for customers requesting to switch to an NGS and that NGDCs make the requested switch at the beginning of the first feasible billing period after the 5-day waiting period.

35. The Company received notice of the Complainant's election to switch to Shipley Energy on November 29, 2022 and mailed a letter confirming the Complainant's selection on November 30, 2022.

36. The Complainant's 5-day waiting period lasted until December 4, 2022.

37. UGI Gas plans to switch the Complainant to Shipley Energy on January 19, 2023, which is the beginning of the first feasible billing period following December 4, 2022.

38. The Company's planned switch complies with the Commission's current requirements for changing a customer's NGS, *i.e.*, the *Tentative Order*.

39. The sole allegation contained in the Complaint is that UGI Gas should have carried out the Complainant's switch date to Shipley Energy prior to January 19, 2023. (*See Complaint ¶¶ 4-5.*)

40. Even assuming, *arguendo*, that UGI Gas could have switched the Complainant to his desired NGS prior to January 19, 2023, UGI Gas's failure to do so would not constitute a violation of the Public Utility Code, the Commission's regulations, or the Company's Commission-approved tariff.

41. In fact, if the Company complied with the Complainant's demands, UGI Gas would have violated the Commission's *Tentative Order*.

42. Therefore, the Complaint fails to establish that UGI Gas violated the Public Utility Code, the Commission's regulations, a Commission order, or the Company's Commission-approved tariff.

43. Only the amendment or repeal of the Commission's *Tentative Order* or the Commission's regulations at 52 Pa. Code §§ 59.93(2) and 59.94 could provide Complainant with the relief he seeks, because, in essence, he seeks amendment of the Commission's time frame standards for changing a customer's natural gas supplier.

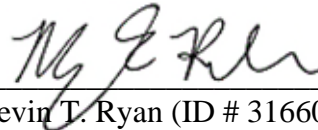
44. A customer cannot amend or repeal a Commission regulation or order through the Commission's formal complaint process outlined at 52 Pa. Code §§ 5.21 and 5.22.

45. Accordingly, the Complaint should be dismissed in its entirety and with prejudice as against UGI Gas, for failure to state a claim upon which relief can be granted.

IV. CONCLUSION

WHEREFORE, UGI Utilities, Inc. – Gas Division respectfully requests that the above-captioned Formal Complaint filed by Kenneth Singh be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



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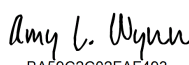
Dated: January 18, 2023

Counsel for UGI Utilities, Inc. – Gas Division

VERIFICATION

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

Date: January 18, 2023

DocuSigned by:

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Amy L. Wynn