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File #: 199665

March 6, 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: Francene Tearpock-Martini v. UGI Utilities, Inc. – Electric Division
Docket No. C-2023-3038243

Dear Secretary Chiavetta:

Attached for filing are the Preliminary Objections of UGI Utilities, Inc. – Electric Division to the Complaint of Francene Tearpock-Martini in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully,



Nicholas A. Stobbe

NAS/dmc
Attachments

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 EMAIL AND FIRST-CLASS MAIL

Francene Tearpock-Martini
56 South Main Street
Shickshinny, PA 18655
ftm@epix.net

Date: March 6, 2023



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martini,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3038243
	:	
UGI Utilities, Inc. – Electric 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 FOR UGI UTILITIES, INC. – ELECTRIC DIVISION.

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Dated: March 6, 2023

Counsel for UGI Utilities, Inc. – Electric Division

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martini,	:	
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v.	:	Docket No. C-2023-3038243
	:	
UGI Utilities, Inc. – Electric Division,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
UGI UTILITIES, INC. – ELECTRIC DIVISION TO THE
FOURTH COMPLAINT OF FRANCENE TEARPOCK-MARTINI**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes UGI Utilities, Inc. – Electric Division (“UGI Electric” or the “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 Commission dismiss the above-captioned Formal Complaint (“*Fourth Complaint*”)¹ filed by Francene Tearpock-Martini (“Complainant”) in its entirety and

¹ The Complainant has filed a series of Complaints against UGI Electric since 2008. The First and Second Complaints were filed at Docket Nos. F-2008-2022125 and C-2021-3027093, respectively. In the First Complaint, the Complainant alleged that the Company trespassed on her property and damaged her specimen tree when it trimmed her tree. Furthermore, the Complainant requested that the Commission order the Company to move its utility pole and facilities. Similarly, in her Second Complaint, Complainant alleged that the Company trespassed on her property and created a liability and hazard on her property. Furthermore, she demanded that UGI Electric be made to move its facilities to an alternate location. The Commission denied both the First and Second Complaints. *See Tearpock-Martini v. UGI Utilities, Inc. – Electric Division*, Docket No. F-2008-2022125 (Order Entered June 18, 2009) (“*First Complaint*”); *Tearpock-Martini v. UGI Utilities, Inc. – Electric Division*, Docket No. C-2021-3027093 (Order Entered Mar. 10, 2022) (“*Second Complaint*”). Similarly, in 2022, the Complainant filed a Third Complaint at Docket No. C-2022-3033942 (“*Third Complaint*”), alleging that UGI Electric is threatening her specimen tree in its attempts to resolve a small aerial encroachment; as such, the Complainant alleged that she felt harassed. On October 17, 2022, UGI Electric filed a Motion for Judgment on the Pleadings, arguing that the Third Complaint was an attempt to relitigate the same issues dealt with in the *First* and *Second Complaints* and, therefore, was barred by *res judicata*, collateral estoppel, and Section 316 of the Pennsylvania Public Utility Code. *See* 66 Pa. C.S. 316. That Motion remains pending before the Commission.

with prejudice because the Commission lacks jurisdiction over the dispute(s). Further, the *Fourth Complaint* is legally insufficient and fails to join necessary parties.

The Commission lacks jurisdiction over the *Fourth Complaint* because the Complainant solely raises tort and property-related issues and claims, specifically, an alleged trespass and property damage. Such issues and claims are beyond the scope of the Commission's jurisdiction and, therefore, the Complaint should be dismissed with prejudice.

Additionally, the *Fourth Complaint* is legally insufficient. The Complainant once again raises issues concerning the Company's facilities – and alleged trespass – near her property at 56 S. Main St., Shickshinny, PA 18655 (“Service Address”). Indeed, through the *Fourth Complaint*, the Complainant does not allege any wrongdoing on the part of UGI Electric. Rather, the Complainant's concerns stem from the alleged actions of “SNAM Communications”² (“SNAM”) and “Frontier Communications” (“Frontier”), which purportedly trespassed on the Complainant's property and damaged certain vegetation at the Service Address. UGI Electric is unaffiliated with either Frontier or SNAM and has no authority or power over the conduct of those entities' employees and contractors. Thus, the Commission should summarily dismiss the *Fourth Complaint* with prejudice because it does not allege any wrongdoing on the part of UGI Electric and, therefore, is legally insufficient.

Furthermore, the Commission should dismiss the *Fourth Complaint* because it fails to join necessary parties. Indeed, the Complainant alleges that certain personnel from SNAM and/or Frontier trespassed on her property. UGI Electric is unaffiliated with either SNAM or Frontier and has no control over what their employees and contractors do. Moreover, as noted

² UGI Electric has attempted to determine the entity to which the Complainant refers to as “SNAM Communications”; however, after reasonable investigation, the Company been unable to determine conclusively what or who the Complainant is referencing.

above, the Complaint fails to allege any wrongdoing by UGI Electric. As such, the Commission should dismiss the Complaint due to its nonjoinder of necessary parties, *i.e.*, the parties responsible for the alleged wrongdoing.

In support thereof, UGI Electric states as follows:

I. BACKGROUND

1. UGI Utilities, Inc. (“UGI Utilities”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and a wholly owned subsidiary of UGI Corporation.

2. UGI Utilities has two divisions – the Gas Division (“UGI Gas”) and the Electric Division.

3. UGI Electric primarily provides electric distribution services to approximately 62,000 customers in Luzerne and Wyoming counties in Northeastern Pennsylvania.

4. UGI Electric is a “public utility” and an “electric distribution company” (“EDC”) as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803.

5. On February 13, 2023, UGI Electric was served with the Complainant’s *Fourth Complaint*, which alleges that the Complainant “caught” employees of SNAM and Frontier on December 1, 2022, trespassing at the Complainant’s Service Address. (*Fourth Complaint* ¶ 5.)

6. UGI Electric herein files these Preliminary Objections to the *Fourth Complaint*. For the reasons explained below, UGI Electric respectfully requests that the Commission summarily dismiss the *Fourth Complaint* because: (1) the Commission lacks jurisdiction to adjudicate the claims and issues raised in the Complaint; (2) the Complaint is legally insufficient as against UGI Electric as it does not allege any wrongdoing by UGI Electric; and (3) the *Fourth Complaint* fails to join necessary parties, *i.e.*, SNAM and Frontier.

II. STANDARD OF REVIEW

7. 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).

8. 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. Cmwlt.*, 910 A.2d 775, 781 (Pa. Cmwlt. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlt. 2005)). 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. Cmwlt. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

9. 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. Cmwlt. 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 COMMISSION LACKS JURISDICTION OVER THE ISSUES AND CLAIMS RAISED IN THE *FOURTH COMPLAINT*

10. UGI Electric incorporates by reference Paragraphs 1 through 9 as though fully set forth herein.

11. The Commission is a creature of statute and may exercise only those powers that are expressly conferred upon it by the legislature. *Tod and Lisa Shedlosky v. Pennsylvania Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

12. It is well-established that the Commission lacks jurisdiction over tort and property-related issues and claims, including claims of trespass. *Mohn v. PPL Elec. Utils. Corp.*, Docket No. C-2012-2301470, 2012 Pa. PUC LEXIS 1058, at *9 (Initial Decision dated June 25, 2012) (“The Commission has no jurisdiction to adjudicate real property issues such as trespass or interference with use or enjoyment of property. Such determinations are solely within the jurisdiction of the courts of the Commonwealth.” (emphasis added)), *reversed and remanded on other grounds*, Docket No. C-2012-2301470 (Opinion and Order entered Oct. 11, 2012); *see also Stabler v. Verizon Pennsylvania, Inc.*, Docket No. C-2012-2284222 (Order entered June 1, 2012); *Perrige v. Metropolitan 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).

13. Put simply, the Commission is not “authorized under the Code to adjudicate tort claims.” *Marian v. Pennsylvania-American Water Co.*, Docket No. C-2019-3011595, 2021 Pa. PUC LEXIS 147, at *11 (Order entered May 20, 2021).

14. Similarly, “[t]he Commission does not have jurisdiction to award damages, which includes compensation for alleged losses in property devaluation or otherwise.” *Application of PECO Energy Co. for a finding of necessity, under Section 619 of the Pennsylvania Municipalities Planning Code, 53 P.S. Section 10619, for the situation of one building on a site containing approximately 10 acres located near the intersection of Wentz Church Road and Fisher Road, in Worcester Township, Montgomery County*, Docket No. A-2008-2033601, 2008 Pa. PUC LEXIS 1078, at *40 (Initial Decision dated Dec. 26, 2008), *adopted as final*, Docket No. A-2008-2033601 (Order entered Feb. 13, 2009).

15. Here, the Complainant alleges that certain employees of SNAM and Frontier “trespassed” on her property and “caus[ed] damage to [the Complainant’s] property and wellbeing.” (*Fourth Complaint* ¶ 5.) Indeed, in Paragraph 4 of the *Fourth Complaint*, the Complainant states that the reason for the *Fourth Complaint* is “[t]respass and damages to property running fiber optic wires on poles.” (*Fourth Complaint* ¶ 4.)

16. These tort and property-related issues and claims are outside of the Commission’s jurisdiction.

17. As such, the *Fourth Complaint* should be dismissed for lack of Commission jurisdiction.

B. PRELIMINARY OBJECTION NO. 2 – THE *FOURTH COMPLAINT* IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED WITH PREJUDICE BECAUSE IT DOES NOT ALLEGE ANY WRONGDOING BY UGI ELECTRIC

18. UGI Electric incorporates Paragraphs 1 through 17 as if fully set forth herein.

19. A complaint is legally insufficient where the complaint does not allege a violation of the Public Utility Code, the Commission’s regulations, a Commission Order, or the utility’s Commission-approved tariff. *See* 66 Pa.C.S. § 701; *see also Nixon v. West Penn Power Co.*, 2012 Pa. PUC LEXIS 923, Docket No. C-2011-2270951 (Initial Decision issued May 29, 2012), *became final without further Commission action* (Final Order entered July 17, 2012).

20. Moreover, a Complaint is legally insufficient when it appears to list the wrong respondent. *See Stabley v. Philadelphia Gas Works*, 2010 Pa. PUC LEXIS 231, Docket No. F-2010-2186368 (Initial Decision issued July 29, 2010), *became final without further Commission action* (Final Order entered Oct. 1, 2010).

21. Here, the *Fourth Complaint* does not allege any facts related to UGI Electric’s conduct or service. Rather, the sole allegations in the *Fourth Complaint* are related to the conduct of unaffiliated third parties. (*Fourth Complaint* ¶ 5.)

22. Indeed, the Complaint explicitly acknowledges that it was “SNAM Communications for Frontier Communications... trespassing with their equipment over [the Complainant’s] cut stone wall chopping and cutting at [the Complainant’s] magnolia tree and shrubbery...” (*Fourth Complaint* ¶ 5.)

23. While the Complainant alleges that SNAM and Frontier are “affiliate[s]” of UGI Electric, they are not.

24. UGI Electric has no authority or supervisory responsibility over the conduct of unaffiliated third parties like SNAM or Frontier.

25. Therefore, the Complaint is legally insufficient as against UGI Electric because it states no claim upon which relief may be granted as against UGI Electric.

C. PRELIMINARY OBJECTION NO. 3 – THE *FOURTH COMPLAINT* SHOULD BE DISMISSED BECAUSE IT FAILS TO JOIN NECESSARY PARTIES

26. UGI Electric incorporates Paragraphs 1 through 25 as if fully set forth herein.

27. Through the *Fourth Complaint*, the Complainant alleges that employees of SNAM and Frontier “trespassed” on her property, leading to damages. (*Fourth Complaint* ¶¶ 4, 5.)

28. The Complainant alleges that SNAM and Frontier are “affiliate[s]” of UGI Electric.

29. SNAM and Frontier are not and have never been affiliates of UGI Electric nor does UGI Electric have any supervisory responsibility over the conduct of either entity.

30. Despite SNAM and Frontier being the entities supposedly responsible for the alleged wrongdoing, the Complainant fails to name either SNAM or Frontier as respondents in the *Fourth Complaint*. (See *Fourth Complaint* ¶ 2.)

31. Under Pennsylvania law, “a necessary party is one whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render complete relief.” *Pa. Human Relations Comm’n v. Phila. Sch. Dist.*, 651 A.2d 177 (Pa. Cmwlth. 1993) (citation omitted.)

32. Here, SNAM and Frontier are necessary parties to this proceeding, given the Complainant’s allegations.

33. Indeed, the Complainant alleges SNAM and Frontier trespassed on her property and caused damage to her property and wellbeing. (*Fourth Complaint* ¶¶ 4-5.)

34. Therefore, the Commission’s determination in this case could affect SNAM and Frontier because those were the entities supposedly responsible for the wrongdoing alleged by the Complainant.

35. As such, without SNAM and Frontier, the Commission cannot resolve the dispute or award relief concerning: (1) whether SNAM and/or Frontier trespassed on the Complainant's property; and (2) whether SNAM and/or Frontier damaged the Complainant's property or wellbeing.

36. Based on the foregoing, the Complainant has failed to join necessary parties, *i.e.*, SNAM and Frontier, in this proceeding. Therefore, the Complaint should be dismissed pursuant 52 Pa. Code § 5.101(a)(5).

IV. CONCLUSION

WHEREFORE, UGI Utilities, Inc. – Electric Division respectfully requests that the above-captioned Fourth Formal Complaint filed by Francene Tearpock-Martini at Docket No. C-2023-3038243 be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(1), (4), and (5).



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Dated: March 6, 2023

Counsel for UGI Utilities, Inc. – Electric Division

VERIFICATION

I, Eric W. Sorber, Vice President and General Manager of UGI Utilities, Inc. – Electric Division, hereby state that the facts set forth above 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: March 6, 2023

DocuSigned by:

Eric W. Sorber

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Eric W. Sorber