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July 7, 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 is the Motion in Limine on behalf of UGI Utilities, Inc. – Electric Division in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/kl
Attachments

cc: The Honorable Chad Allensworth (*via email; w/att.*)
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

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VIA EMAIL AND FIRST-CLASS MAIL

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Shickshinny, PA 18655
ftm@epix.net

Date: July 7, 2023



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martini :
 :
 v. : C-2023-3038237
 :
 Frontier Communications of Pennsylvania, Inc. :

and

Francene Tearpock-Martini :
 :
 v. : C-2023-3038243
 :
 UGI Utilities, Inc. – Electric Division :

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Dated: July 7, 2023

Counsel for UGI Utilities, Inc. – Electric Division

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martini :
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 v. : C-2023-3038237
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Francene Tearpock-Martini :
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 :
 UGI Utilities, Inc. – Electric Division :

**MOTION IN LIMINE OF
UGI UTILITIES, INC. – ELECTRIC DIVISION TO PROHIBIT
THE COMPLAINANT FROM PRESENTING TESTIMONY AND EXHIBITS
RELATED TO ALLEGATIONS AND ISSUES PREVIOUSL LITIGATED
IN PRIOR COMPLAINT PROCEEDINGS**

TO ADMINISTRATIVE LAW JUDGE CHAD L. ALLENSWORTH:

UGI Utilities, Inc. – Electric Division (“UGI Electric” or the “Company”) hereby files this Motion in Limine pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.103 and requests that Administrative Law Judge Chad L. Allensworth (the “ALJ”) prohibit Francene Tearpock-Martini (“Complainant”) from presenting any testimony and exhibits related to: (1) the Company’s alleged trespass and alleged destruction of the Complainant’s “specimen tree”; (2) the lawfulness of UGI Electric’s facilities’ location(s), including, but not limited to, utility poles, near the Complainant’s property at 56 S. Main St., Shickshinny, PA 18655 (“Service Address”); (3) the requested relocation of certain of UGI Electric’s facilities, including utility poles, away from the Service Address; (4) the lawfulness of

anchor wires near or traversing the Service Address; (5) the Company's or its contractors' alleged harassment of the Complainant; or (6) in general, matters previously addressed and fully litigated or that are under current consideration by the Commission relating to Complainant's prior Formal Complaints ("Complaints") filed against the Company.

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 performed routine vegetation management near the Service Address. Furthermore, the Complainant requested that the Commission order the Company to move its utility pole and facilities away from the Service Address. 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, at least in part, 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*").

In 2022, the Complainant filed a Third Complaint at Docket No. C-2022-3033942 ("*Third Complaint*"), alleging that UGI Electric was threatening her specimen tree in its attempts to resolve a small aerial encroachment; as such, the Complainant alleged that she felt harassed by UGI Electric and its contractors. UGI Electric filed a Motion for Judgment on the Pleadings in the *Third Complaint* proceeding, arguing that issues related to an alleged aerial encroachment, alleged threats made by UGI related to the installation of overhead wires near the Complainant's specimen

tree, and the relocation of a UGI Electric utility pole were fully and finally decided by the Commission's Orders on both the *First* and *Second Complaints* and, therefore, UGI Electric was entitled to judgment as a matter of law. Administrative Law Judge ("ALJ") Collins denied that Motion for Judgment on the Pleadings, however, limited the scope of the issues to be presented in the *Third Complaint* proceeding to "the specific issue of harassment" as the issues related to the alleged aerial encroachment, relocation or installation of an aerial wire near the Complainant's specimen tree, and relocation of a UGI Electric utility pole had been fully litigated and finally decided by the Commission in the *First* and *Second Complaint* proceedings. See *Order Denying Motion For Judgement on the Pleadings and Limiting the Scope of the Proceeding*, Docket No. C-2022-3033942, p. 16 (Order Entered April 6, 2023) ("*Third Complaint Order*"). An Evidentiary Hearing for the *Third Complaint* took place on May 16, 2023, at 10:00 a.m. before Administrative Law Judge Charece Z. Collins. As of the date of this Motion, the *Third Complaint* has not been ruled on.

On February 13, 2023, UGI Electric was served with the above-captioned Complaint ("*Fourth Complaint*"), which alleged that the Complainant "caught" employees of Frontier Communications of Pennsylvania, LLC ("Frontier") trespassing at the Service Address and "chopping and cutting" the Complainant's magnolia tree, among other things.¹ Through the *Fourth Complaint*, the Complainant did not allege any wrongdoing on the part of UGI Electric. With that in mind, to the extent that the Complainant attempts to present testimony or exhibits related to issues that have already been litigated or are pending before the Commission, UGI

¹ The Commission initially interpreted the party the Complainant identified in the *Fourth Complaint* as "Frontier" to be Frontier Utilities Northeast, LLC ("Frontier Utilities"). On March 2, 2023, Frontier Utilities filed an Answer and New Matter along with Preliminary Objections to the Complaint claiming that the Complaint was against Frontier Communications of Pennsylvania, Inc. as opposed to Frontier Utilities. By response filed March 7, 2023, the Complainant agreed that Frontier Communications was the intended Respondent. The Commission subsequently determined that Frontier Communications was the correct Respondent for this case. Frontier was served with the above-captioned Complaint on April 5, 2023, and filed an Answer and New Matter on May 12, 2023.

Electric respectfully requests that the Complainant be prohibited from presenting any testimony or exhibits related to the same at the July 11, 2023 Evidentiary Hearing. Indeed, the aforementioned issues have either: (1) been ruled on by the Commission in the *First* and *Second Complaint* proceedings; or (2) are currently pending before the Commission as part of the *Third Complaint* proceeding.

In support thereof, the Company states as follows:

I. BACKGROUND

1. UGI Utilities, Inc. (“UGI Utilities”) is a public utility organized and existing under the laws of the Commonwealth of Pennsylvania and is 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 *Fourth Complaint*, which alleges that the Complainant “caught” employees of Frontier on December 1, 2022, trespassing at the Complainant’s Service Address and “chopping and cutting” the Complainant’s magnolia tree. (*Fourth Complaint* ¶ 5.)

6. On March 6, 2023, the Company filed Preliminary Objections to the *Fourth Complaint*, arguing: (1) that the Commission lacked jurisdiction over the claims and issues raised in the *Fourth Complaint*; (2) that the *Fourth Complaint* should be dismissed as legally insufficient

because it does not allege any wrongdoing on the part of UGI Electric; and (3) that the *Fourth Complaint* failed to join necessary parties.

7. Also on March 6, 2023, UGI Electric filed an Answer and New Matter to the *Fourth Complaint*, responding to the Complainant's allegations raised in the *Fourth Complaint*. In its New Matter, UGI Electric argued that the Complainant failed to join necessary parties to the *Fourth Complaint* – including Frontier.

8. On March 7, 2023, the Complainant filed a “Reply to UGI Utilities, Inc. – Electric Division on Motion that Proceedings of Complaint be Dismissed.”

9. On April 11, 2023, the ALJ issued an Order Granting In Part And Denying In Part the Company's Preliminary Objections. The ALJ granted the Company's Preliminary Objection insofar as the Commission will not award monetary damages. The ALJ denied UGI Electric's other Preliminary Objections.

10. On May 24, 2023, the ALJ issued an Order consolidating the Complaints against UGI Electric and Frontier at Docket Nos. C-2023-3038243 and C-2023-3038237, respectively.

11. On May 25, 2023, a Corrected Telephonic Hearing Notice was issued, scheduling the consolidated Evidentiary Hearing for the *Fourth Complaint* for July 11, 2023, at 10:00 a.m.

12. On June 30, 2023, Frontier served its proposed hearing exhibits.

13. On July 3, 2023, UGI Electric served its proposed hearing exhibit.

14. To date, the Complainant has not served any hearing exhibits.

II. MOTION IN LIMINE

15. UGI Electric respectfully requests that the ALJ grant the instant Motion in Limine to the extent necessary and prohibit the Complainant from presenting any testimony and exhibits regarding: (1) the Company's alleged trespass and alleged destruction of the Complainant's “specimen tree”; (2) the lawfulness of UGI Electric's facilities' location(s), including utility poles,

near the Service Address; (3) the requested relocation of certain of UGI Electric's facilities, including utility poles, away from the Service Address; (4) the lawfulness of anchor wires near or traversing the Service Address; (5) the Company's or its contractors' alleged harassment of the Complainant; or (6) in general, matters previously addressed and fully litigated or that are under current consideration by the Commission relating to Complainant's prior Complaints filed against the Company.

16. The Commission was clear in its Order in the *Second Complaint* proceeding that issues related to the presence of the Company's facilities dealt with in the *First Complaint* proceeding were evaluated, explaining:

The evidentiary record is clear that UGI has reasonably offered remedial options and attempted to remedy the inadvertent aerial encroachment of 2.5 feet of guy wires on the corner of the Complainant's property. However, Ms. Tearpock-Martini has rebuffed such efforts and ordered UGI's personnel off of her land.

First Complaint Order, p. 15.

17. Similarly, in ruling on the Company's Motion for Judgment on the Pleadings in the *Third Complaint* proceeding, ALJ Charece Z. Collins explained that:

That the issue to be decided in this litigation is whether UGI has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff by the way in which UGI has attempted to proceed with options – deemed to be reasonable by the Commission – to remedy its aerial encroachment.

Third Complaint Order, p. 16.

Furthermore, ALJ Collins made it clear that the Complainant would not be provided with the opportunity to re-litigate issues from her prior Complaints. More specifically, ALJ Collins stated:

Any disagreement that Ms. Tearpock-Martini had with the Commission's order should have been raised on appeal and will not be addressed in this litigation. Complainant will be barred from providing testimony or evidence at the next evidentiary hearing on the issues of reasonableness of UGI's options for addressing the

aerial encroachment; right-of-way; alleged mischaracterization of evidence in the underlying litigation; and any other issues raised in the 2021 or any prior litigation.

Third Complaint Order, p. 13-14.

18. Here, through the *Fourth Complaint*, the Complainant alleges that Frontier trespassed “with their equipment over [the Complainant’s] cut stone wall chopping and cutting at [the Complainant’s] magnolia tree and shrubbery” at the Service Address.

19. To the extent that the Complainant attempts to raise other issues regarding what has already been litigated – or is currently being considered – by the Commission with regard to the *First*, *Second*, or *Third Complaint* proceedings, such issues are well outside the scope of the allegations made in the *Fourth Complaint*.

20. Moreover, issues regarding: (1) the Company’s alleged trespass and alleged destruction of the Complainant’s “specimen tree”; (2) the lawfulness of UGI Electric’s facilities’ location(s), including utility poles, near the Service Address; (3) the requested relocation of certain of UGI Electric’s facilities, including utility poles, away from the Service Address; (4) the lawfulness of anchor wires near or traversing the Service Address; or (5) the Company’s or its contractors’ alleged harassment of the Complainant have been fully litigated or are currently being considered by the Commission.

21. If the Complainant were permitted to introduce testimony or evidence regarding extra-complaint allegations already fully litigated or pending before the Commission, the Company would, in essence, be forced to re-litigate issues that have already been dealt with in the *First* and *Second Complaint* proceedings, or are currently being considered by the Commission in the *Third Complaint* proceeding at Docket No. C-2022-3033942.

22. To the extent necessary to prevent this undue prejudice, the Complainant should be prohibited from presenting any testimony and exhibits that relate to what has previously been litigated before the Commission in the *First*, *Second*, and *Third Complaint* proceedings.

23. Further, the allegations in the *Fourth Complaint* are limited to alleged trespass by Frontier, and Frontier's alleged "chopping and cutting" of certain vegetation at or near the Service Address on December 1, 2022.

24. For these reasons, UGI Electric respectfully requests that the ALJ grant the instant Motion in Limine and prohibit the Complainant from introducing into evidence any testimony and exhibits relating to the allegations made in the Complainant's prior Complaint proceedings.

III. CONCLUSION

WHEREFORE, UGI Utilities, Inc. – Electric Division respectfully requests that Administrative Law Judge Chad L. Allensworth grant this Motion in Limine and prohibit the Complainant from presenting any testimony and exhibits related to: (1) the Company’s alleged trespass and alleged destruction of the Complainant’s “specimen tree”; (2) the lawfulness of UGI Electric’s facilities’ location(s), including utility poles, near the Service Address; (3) the requested relocation of certain of UGI Electric’s facilities, including utility poles, away from the Service Address; (4) the lawfulness of anchor wires near or traversing the Service Address; (5) the Company’s or its contractors’ alleged harassment of the Complainant; or (6) in general, matters previously addressed and fully litigated or that are under current consideration by the Commission relating to Complainant’s prior Complaints filed against the Company.

Respectfully submitted,



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Dated: July 7, 2023

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