
Peter J. Kramer

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File #: 205630

April 16, 2024

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: Sarah Aed v. UGI Utilities, Inc. – Gas Division
Docket No. C-2024-3047793**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objection of UGI Utilities, Inc. – Gas Division to the Complaint of Sarah Aed in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Peter J. Kramer

PJK/dmc
Attachments

cc: Certificate of Service

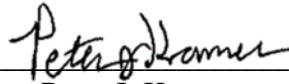
CERTIFICATE OF SERVICE

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

Sarah Aed
67 Lackawanna Ave
Swoyersville, PA 18704
sarahaed@gmail.com

Date: April 16, 2024



Peter J. Kramer

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sarah Aed,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3047793
	:	
UGI Utilities, Inc. – Gas Division,	:	
	:	
Respondent.	:	

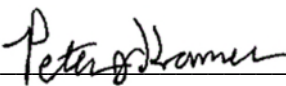
NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION 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: April 16, 2024



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Counsel for UGI Utilities, Inc. – Gas Division

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sarah Aed,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3047793
	:	
UGI Utilities, Inc. – Gas Division,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
UGI UTILITIES, INC. – GAS DIVISION TO THE
COMPLAINT OF SARAH AED**

AND NOW, comes UGI Utilities, Inc. – Gas Division (“UGI Gas” or “Company”) and hereby files this Preliminary Objection, 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 Sarah Aed (“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. On March 27, 2024, UGI Gas was served with the above-captioned Complaint. In the Complaint, the Complainant states she is “filing a formal complaint of the [Commission’s]

allowance of UGI's weather normalization rate fee being added to [the Complainant's] monthly bill." (See Complaint ¶¶ 4-5.)

4. UGI Gas herein files this Preliminary Objection 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 OBJECTION

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. The Company accurately calculated and applied a Weather Normalization Adjustment (“WNA”) charge of \$18.12 to the Complainant’s natural gas service bill that was due on April 8, 2024.

14. The Company’s WNA became effective on October 29, 2022, pursuant to the Commission-approved settlement in UGI Gas’s 2022 base rate case and the Company’s Commission-approved tariff. *See Pa. PUC v. UGI Utils., Inc. – Gas Div.*, Docket Nos. R-2021-3030218, *et al.* (Order entered Sept. 15, 2022); Rider C, Supp. No. 37 to UGI Gas – Pa. P.U.C. No. 7, Third Revised Page No. 53.

15. The provision of the Company’s tariff that governs WNA states that “A Weather Normalization Adjustment (“WNA”) shall be applied to bills of Residential and Non-Residential

customers under Rate Schedules R, RT, N and NT, for any bills rendered during the heating season October through May. The WNA shall commence with bills rendered on and after November 1, 2022, and shall continue as a five-year pilot unless otherwise modified by Commission Order.”
See Supp. No. 37 to UGI Gas – Pa. P.U.C. No. 7, Third Revised Page No. 53.

16. The WNA is a billing adjustment that is only applied to customer bills issued from October through May each year.

17. UGI Gas’s natural gas distribution rates are established in base rate proceedings based on a determination of expected demand, or sales, during normal weather conditions. Accordingly, the WNA affects only the “Distribution Charges” portion of a customer’s bill and not the gas cost or commodity charge portion of a customer’s bill.

18. The WNA adjusts the Company’s distribution charges on customer bills during variations from normal weather in order to have the bill reflect normal weather conditions for each billing period and to make bills more predictable during periods of warmer or colder than normal temperatures.

19. For the customer, the WNA results in more predictable bills during periods of warmer or colder than normal temperatures.

20. The sole allegation in the Complaint challenges the Commission’s decision to allow WNA charges on the Complainant’s bills.

21. By applying an accurately calculated WNA charge to the Complainant’s bill, UGI Gas has complied with its Commission-approved tariff.

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

23. 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.

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

IV. CONCLUSION

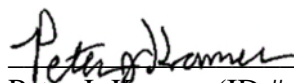
WHEREFORE, UGI Utilities, Inc. – Gas Division respectfully requests that the above-captioned Formal Complaint filed by Sarah Aed be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,

Michael Swerling (ID # 94748)
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Dated: April 16, 2024



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Counsel for UGI Utilities, Inc. – Gas Division

VERIFICATION

I, Kimberly M. Bassininsky, Principal Rates Analyst at 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: April 16, 2024

DocuSigned by:
Kim Bassininsky
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Kimberly M. Bassininsky