

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Doug Wilson	:	
	:	
v.	:	C-2024-3047554
	:	
Frontier Utilities Northeast LLC	:	
UGI Utilities, Inc. – Gas Division	:	

Doug Wilson	:	
	:	
v.	:	C-2024-3047576
	:	
Frontier Utilities Northeast LLC	:	
UGI Utilities, Inc. – Gas Division	:	

**ORDER**  
**GRANTING PRELIMINARY OBJECTIONS**  
**CONSOLIDATING PROCEEDINGS**  
**AND ORDERING JOINDER OF UGI UTILITIES, INC. – GAS DIVISION**

On March 18, 2024, Doug Wilson (Mr. Wilson or Complainant) filed a Formal Complaint against Frontier Utilities Northeast LLC (Frontier) regarding his Frontier account ending in 7199. The Formal Complaint was served on March 19, 2024 and docketed at C-2024-3047554. In his Complaint, Mr. Wilson states that he signed up for gas supply with Frontier on April 12, 2023. Mr. Wilson states that he called Frontier on December 23, 2023 to cancel his account, and he was told by a Frontier representative that it would take up to two billing cycles. Mr. Wilson states that he received an e-mail from Frontier on February 22, 2024, stating that his contract was almost up. Mr. Wilson states that he called Frontier on February 26, 2024 to ask why the account still had not been canceled, and he was told by a Frontier representative that UGI refused to cancel Mr. Wilson’s Frontier account. Mr. Wilson avers that he was then called on February 28, 2024 by a Frontier representative who explained that UGI refused to allow him to cancel his Frontier account. Mr. Wilson states that he sent cancellation letters to Frontier by e-mail and USPS first class mail on February 29, 2024, and has not yet received a response. As

relief, Mr. Wilson requests that his Frontier account ending in 7199 be cancelled immediately and be refunded the difference of the Frontier rate and the UGI rate for the three billing cycles after the cancellation request date of December 12, 2023. He also requests compensation of \$200 for the four hours he states he has spent on this matter.

On April 8, 2024, Frontier filed an answer and new matter to Mr. Wilson's Complaint at docket number C-2024-3047554. Frontier's answer and new matter included a notice to plead regarding the new matter. Frontier states that it received Mr. Wilson's enrollment on April 21, 2023. Frontier denies that Mr. Wilson contacted Frontier on December 23, 2023. Instead, Frontier avers that Mr. Wilson contacted Frontier on December 12, 2023, and requested that his service be returned to UGI's default service. Frontier states that it submitted the request to UGI on December 12, 2023, but the request was rejected by UGI. Frontier admits that Mr. Wilson received a marketing e-mail from Frontier on February 22, 2024. Frontier also admits that Complainant contacted Frontier on February 26, 2024 and Complainant was contacted by Frontier on February 28, 2024 regarding the status of Mr. Wilson's request to be returned to UGI's default service. Frontier states that it submitted a third drop request to UGI on February 28, 2024, which was accepted by UGI. Frontier states that it provided service to Complainant until April 4, 2024 as determined by UGI. Frontier denies that Mr. Wilson sent cancellation letters via e-mail and USPS first class mail on February 29, 2024. Instead, Frontier states that it received Complainant's letter by e-mail on February 28, 2024. Frontier denies that Complainant did not receive a response from Frontier where, as of April 4, 2024, Mr. Wilson's account was returned to UGI as determined by UGI. In both its answer and new matter, Frontier denies that the Commission has authority to direct Frontier to issue a refund,<sup>1</sup> and denies that the Commission is empowered to order Frontier to issue Complainant compensation of \$200. No response to Frontier's new matter has been filed.

On April 8, 2024, UGI Utilities, Inc. – Gas Division (UGI) filed an answer to Mr. Wilson's Complaint at docket number C-2024-3047554. UGI admits that Mr. Wilson received

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<sup>1</sup> Frontier states that, despite this assertion, it has refunded Complainant the difference between Complainant's contract rate and UGI's price to compare rate for the billing cycles from December 12, 2023 to April 4, 2024.

natural gas supply service from Frontier from June 6, 2023 to April 4, 2024. However, UGI denies that it refused to allow Complainant to cancel an account with Frontier. UGI avers that it received drop requests from Frontier on December 12, 2023 and February 27, 2023 that were incomplete and missing necessary information. As a result, both of the requests were rejected and Frontier was notified that the requests were not processed. UGI states that on February 28, 2024, it received a fully complete request that Mr. Wilson had elected to drop natural gas supply service from Frontier. Thereafter, UGI notified the Complainant by letter dated February 29, 2024, that he would begin receiving natural gas supply service from UGI's default service on April 4, 2024, his regularly scheduled meter reading date for that month. UGI avers that it acted promptly, within a reasonable and prudent timeline, and consistent with its Choice program rules to switch Complainant's service upon notice from Frontier.

Also on April 8, 2024, UGI filed preliminary objections to Mr. Wilson's Complaint at docket number C-2024-3047554. UGI's preliminary objections included a notice to plead. UGI's preliminary objections request that the portion of Mr. Wilson's Complaint requesting monetary damages, i.e., to receive compensation of \$200, be dismissed pursuant to 52 Pa. Code § 5.101(a)(2) because a request for damages constitutes impertinent matter. No response to UGI's preliminary objections has been filed.

On March 19, 2024, Mr. Wilson filed a Formal Complaint against Frontier regarding his Frontier account ending in 7201. The Formal Complaint was served on March 19, 2024 and docketed at C-2024-3047576. In his Complaint, Mr. Wilson states that he signed up for gas supply with Frontier on April 12, 2023. Mr. Wilson states that he called Frontier on December 23, 2023 to cancel his account, and he was told by a Frontier representative that it would take up to two billing cycles. Mr. Wilson states that he received an e-mail from Frontier on February 22, 2024, stating that his contract was almost up. Mr. Wilson states that he called Frontier on February 26, 2024 to ask why the account still had not been canceled, and he was told by a Frontier representative that UGI refused to cancel Mr. Wilson's Frontier account. Mr. Wilson avers that he was then called on February 28, 2024 by a Frontier representative who explained that UGI refused to allow him to cancel his Frontier account. Mr. Wilson states that he sent cancellation letters to Frontier by e-mail and USPS first class mail on

February 29, 2024, and has not yet received a response. As relief, Mr. Wilson requests that his Frontier account ending in 7201 be cancelled immediately and be refunded the difference of the Frontier rate and the UGI rate for the three billing cycles after the cancellation request date of December 12, 2023. He also requests compensation of \$200 for the four hours he states he has spent on this matter.

On April 8, 2024, Frontier filed an answer and new matter to Mr. Wilson's Complaint at docket number C-2024-3047576. Frontier's answer and new matter included a notice to plead regarding the new matter. Frontier states that it received Mr. Wilson's enrollment on April 21, 2023. Frontier denies that Mr. Wilson contacted Frontier on December 23, 2023. Instead, Frontier avers that Mr. Wilson contacted Frontier on December 12, 2023, and requested that his service be returned to UGI's default service. Frontier states that it submitted the request to UGI on December 12, 2023, but the request was rejected by UGI. Frontier admits that Mr. Wilson received a marketing e-mail from Frontier on February 22, 2024. Frontier also admits that Complainant contacted Frontier on February 26, 2024 and Complainant was contacted by Frontier on February 28, 2024 regarding the status of Mr. Wilson's request to be returned to UGI's default service. Frontier states that it submitted a third drop request to UGI on February 28, 2024, which was accepted by UGI. Frontier states that it provided service to Complainant until April 4, 2024 as determined by UGI. Frontier denies that Mr. Wilson sent cancellation letters via e-mail and USPS first class mail on February 29, 2024. Instead, Frontier states that it received Complainant's letter by e-mail on February 28, 2024. Frontier denies that Complainant did not receive a response from Frontier where, as of April 4, 2024, Mr. Wilson's account was returned to UGI as determined by UGI. In both its answer and new matter, Frontier denies that the Commission has authority to direct Frontier to issue a refund,<sup>2</sup> and denies that the Commission is empowered to order Frontier to issue Complainant compensation of \$200. No response to Frontier's new matter has been filed.

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<sup>2</sup> Frontier states that, despite this assertion, it has refunded Complainant the difference between Complainant's contract rate and UGI's price to compare rate for the billing cycles from December 12, 2023 to April 4, 2024.

On May 22, 2024, the Commission issued motion judge assignments at both docket numbers C-2024-3047554 and C-2024-3047576, assigning me as the presiding officer to both proceedings.

### Preliminary Objections

UGI's preliminary objections filed at docket number C-2024-3047554 are now ready for disposition, and they will be granted as stated below. The request for monetary damages, i.e., compensation of \$200, will be stricken from the Formal Complaint at docket number C-2024-3047554. Further, consistent with the below discussion, Mr. Wilson is advised he will be prohibited from introducing at an evidentiary hearing any testimony or exhibits for the purpose of recouping alleged monetary damages regarding his Complaint at either docket number C-2024-3047554 or docket number C-2024-3047576.

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (*Equitable*). Section 5.101(a) provides:

- (a) *Grounds*. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:
- (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 a proceeding.

52 Pa. Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Commw. of Pa. v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Mr. Wilson and should dismiss the complaint only if it appears that Mr. Wilson would not be entitled to relief under any circumstances as a matter of law. *Equitable, supra*; *see also, Interstate Traveler Services, Inc. v. Commw., Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979).

In this case, Mr. Wilson alleges that his request for his natural gas supply service to be transferred from Frontier to UGI was improperly processed and, as relief, he requests to be refunded the difference between the Frontier rate and the UGI rate for the three billing cycles after the cancellation request date of December 12, 2023, as well as compensation of \$200 for the four hours he states he has spent on this matter.

UGI's preliminary objections will be granted because, even when accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, and viewing the Formal Complaint in the light most favorable Mr. Wilson, it is clear that the Commission lacks jurisdiction to award monetary damages, i.e., the requested compensation of \$200.

It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super 1945).

Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *Id.* at 794.

As a result, to the extent Mr. Wilson requests that the Commission award monetary damages, such a claim is impertinent to this proceeding. UGI's preliminary objections will be granted regarding Mr. Wilson's request for monetary damages. When accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those facts, and viewing the Formal Complaint in this case in the light most favorable to Mr. Wilson, it is clear that Mr. Wilson is not entitled to monetary damages from this Commission under any circumstances as a matter of law. Mr. Wilson's request for monetary damages will be stricken from the Formal Complaint at docket number C-2024-3047554 because it is an impertinent matter. 52 Pa. Code § 5.101(a)(2).

Although not the subject of preliminary objections, Mr. Wilson's Formal Complaint at docket number C-2024-3047576 similarly requests compensation of \$200. Mr. Wilson is advised that, consistent with the above discussion, to the extent he intends to introduce at an evidentiary hearing testimony or exhibits for the purpose of recouping alleged monetary damages at either docket number C-2024-3047554 and C-2024-3047576, such testimony or exhibits will be prohibited. However, Mr. Wilson is not prohibited from introducing testimony or exhibits if introduced only for the purpose of addressing any issues that are under the Commission's jurisdiction. Additionally, Mr. Wilson is advised that to sustain his burden of proof at hearing, he must demonstrate by a preponderance of the evidence that either UGI or Frontier have violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, all orders of the Commission must be

supported by substantial evidence. This is a different standard than that used in addressing UGI's preliminary objections.

Consolidation of Docket Numbers C-2024-3047554 and C-2024-3047576

Section 5.81 of the Commission's rules governs consolidation of proceedings. This Section provides:

§ 5.81. Consolidation.

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

52 Pa.Code § 5.81.

Per the Commission's notice dated May 22, 2024, both docket numbers C-2024-3047554 and C-2024-3047576 were assigned to me. Both dockets C-2024-3047554 and C-2024-3047576 contain common questions of fact and law. Specifically, the Formal Complaints include the same complainant and complainant's allegations include the same allegations that his requests for his natural gas supply service to be transferred from Frontier to UGI were improperly processed. Both Formal Complaints also include the same requests for relief. The only difference between the two Formal Complaints is that they concern gas supply provided to two different properties. Additionally, as a result of my ordering joinder of UGI to docket number C-2024-3047576 as discussed below, both proceedings involve the same respondents. Consolidation of these dockets will avoid unnecessary delay or cost; therefore, a *sua sponte* consolidation of these cases is warranted for judicial efficiency.

Joinder of UGI as an Indispensable Party to Docket Number C-2024-3037576

In Pennsylvania, an indispensable party “is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights....” *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377 (Pa. 1975). Further, in Pennsylvania, absence of an indispensable party deprives a court of jurisdiction. *Id.* Therefore, if not raised by the parties, the issue of an indispensable party should be raised *sua sponte*. *Posel v. Redevelopment Authority of Philadelphia*, 72 Pa. Commw. 115 (Pa. Cmwlth. 1983). The Pennsylvania Supreme Court has established that “the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party ... In order to make the analysis, however, one must refer to the nature of the claim and the relief sought.” *Cry, Inc. v. Mill Service, Inc.*, 536 Pa. 462 (Pa. 1994). Adopting the criteria articulated in *Mechanicsburg Area School District v. Kline*, 494 Pa. 476 (Pa. 1981), the court’s test for determining indispensability involved “at least” the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

In this consolidated proceeding, UGI is currently a named respondent to the Formal Complaint at docket number C-2024-3047554 only. After applying the test for determining indispensability as set forth by the Pennsylvania Supreme Court, I find UGI to be an indispensable party to the proceeding at docket number C-2024-3047576 as well. Mr. Wilson’s Formal Complaint at C-2024-3047576 alleges his request for his natural gas supply service to be transferred from Frontier to UGI was improperly processed. Therefore, both Frontier and UGI are implicated in Mr. Wilson’s Formal Complaint and UGI has an interest to defend itself against the allegations and relief sought by Mr. Wilson. UGI’s participation in this proceeding is essential to the merits of this case, as UGI may be able to provide evidence in response to Mr. Wilson’s Formal Complaint that his natural gas supply service to be transferred from Frontier to UGI was improperly processed. If UGI was not joined as an indispensable party now, it would not be afforded due process to defend itself against Mr. Wilson’s Formal Complaint. Therefore,

to ensure the Commission's jurisdiction, avoid confusion, and provide adequate due process to all parties, I find it necessary to join UGI to provide UGI an opportunity to respond to Mr. Wilson's Formal Complaint docketed at C-2024-3047576. UGI shall have twenty days from the date of this order to respond to the Formal Complaint docketed at C-2024-3047576 as though it was also a named respondent. This will ensure both Mr. Wilson has a full opportunity to be heard regarding his Formal Complaint at docket number C-2024-3047576 and UGI has a full opportunity to defend itself. After UGI responds to the Formal Complaint at C-2024-3047576, and, if applicable, the time for any further responses ends, this consolidated proceeding will be scheduled for an evidentiary hearing.

In the interim, the parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by UGI Utilities, Inc. – Gas Division at Docket Number C-2024-3047554 on April 8, 2024 are hereby granted consistent with this order;
2. That the request for monetary damages contained in the Formal Complaint filed by Doug Wilson at Docket Number C-2024-3047554 is stricken;



**C-2024-3047554 AND C-2024-3047576 - DOUG WILSON v. FRONTIER UTILITIES  
NORTHEAST LLC AND UGI UTILITIES INCORPORATED**

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