

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Potora	:	
	:	
v.	:	C-2024-3050151
	:	
UGI Utilities, Inc. – Gas Division	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision grants UGI Utilities, Inc. – Gas Division’s Motion for Judgment on the Pleadings that seeks dismissal of the Formal Complaint filed by Jennifer Potora on July 17, 2024, because the Commission previously issued an order barring Ms. Potora from filing informal or formal complaints regarding arrearages until all arrearages are paid in full.

HISTORY OF THE PROCEEDING

On July 17, 2024, Jennifer Potora (Ms. Potora or Complainant) filed a Formal Complaint against UGI Utilities, Inc. – Gas Division (UGI Gas or Company). The Formal Complaint was served on UGI Gas on July 18, 2024. The Complainant alleges that UGI Gas is threatening to shut off her service or has already shut off her service; that she would like a payment arrangement; that there are incorrect charges on her bill; and that her meter was never changed.

On August 7, 2024, UGI Gas filed an answer and new matter to the Formal Complaint. In its answer, UGI Gas admitted that it issued a termination notice to the Complainant on July 12, 2024, but states Ms. Potora's gas service was not terminated. UGI Gas denies there are incorrect charges on Ms. Potora's bill. UGI Gas denies that Complainant contacted the Company to request a meter change related to the disputed billing. UGI Gas also states that this is Complainant's fifth complaint in which she has disputed her arrearages with UGI Gas or its former wholly owned subsidiaries, and that the Commission has barred the Complainant from pursuing additional complaints against UGI Gas until her arrearages are paid in full. In its new matter, UGI Gas states that the Complaint is barred by 66 Pa.C.S. § 316, the doctrines of *res judicata* and collateral estoppel, and the Commission's August 8, 2019 Order barring the Complainant from initiating any further Commission complaints against UGI Gas regarding her arrearages until all of Complainant's arrearages are paid in full. UGI Gas asserts that Complainant has not paid her arrearages in full and has a balance in arrears with UGI Gas of \$6,218.93 and nothing in the Formal Complaint establishes that Ms. Potora has paid in full, the arrears on her account with UGI Gas. UGI Gas's answer and new matter included a notice to plead within 20 days. Ms. Potora did not file a response to UGI Gas's new matter.

Also on August 7, 2024, UGI Gas filed preliminary objections to the Formal Complaint. UGI Gas avers that Ms. Potora's Formal Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4). UGI Gas's preliminary objections included a notice to plead within 10 days.

On August 19, 2024, Ms. Potora filed a motion, requesting an extension of time by 10 days to respond to UGI Gas's preliminary objections because she needed time to review the preliminary objections and that she is seeking counsel. On August 23, 2024, UGI Gas filed a letter, stating that it did not oppose Ms. Potora's request to file a response to its preliminary objections by August 29, 2024. On August 23, 2024, Ms. Potora filed an

amended motion, requesting an extension of time by 10 days to respond to UGI Gas’s preliminary objections. Ms. Patora stated that the reason for her amended motion was because the August 19, 2024 motion mistakenly indicated that Complainant was represented by counsel.

On August 27, 2024, the Commission issued a motion judge assignment notice, assigning me to this proceeding. On August 29, 2024, I issued an order granting Ms. Patora’s amended motion for an extension of time to respond to UGI Gas’s preliminary objections and setting September 3, 2024 as the due date for Ms. Patora’s response. On September 3, 2024, Ms. Patora submitted the following message by e-mail:

“I want to make a payment arrangement with ugi but they refuse I was in a not so good situation before with my payment arrangements but I am in a better place and would like to work something out but ugi refuses to Do so I am asking for something to Be worked out with them. If there is anything you can do I would greatly appreciate it. I have had a lot of health issues but want to make this right I really do hope you can have them make some Kind of agreement with me. Thank you.”

UGI Gas’s preliminary objections are procedurally ready to be ruled upon. For the reasons explained below, I am granting UGI’s Gas’s preliminary objections as a motion for judgment on the pleadings.

FINDINGS OF FACT

1. The Complainant in this case is Jennifer Patora.
2. The Respondent in this case is UGI Utilities, Inc. – Gas Division.
3. On July 17, 2024, Complainant filed a Formal Complaint, alleging that UGI Gas is threatening to shut off her service or has already shut off her service; that she

would like a payment arrangement; that there are incorrect charges on her bill; and that her meter was never changed.

4. On August 7, 2024, UGI Gas filed an answer and new matter to Ms. Patora's Formal Complaint.

5. Ms. Patora did not respond to UGI Gas's new matter.

6. On August 7, 2024, UGI Gas filed preliminary objections to Ms. Patora's Formal Complaint.

7. Ms. Patora filed a response to UGI Gas's preliminary objections on September 3, 2024.

8. On July 7, 2017, the Commission entered an Order dismissing the Formal Complaint in *Patora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2016-2574107 (Final Order entered July 7, 2017) (*Patora I*).

9. On August 14, 2018, the Commission entered an Order dismissing the Formal Complaint in *Patora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3000028 (Final Order entered Aug. 14, 2018) (*Patora II*).

10. On August 8, 2019, the Commission entered an Order dismissing the Formal Complaint in *Patora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered Aug. 8, 2019) (*Patora III*).

11. Complainant's Third Complaint (*Patora III*) raised the same concerns over termination, usage, and charges, as in her two prior Complaints but also alleged her income decreased after she stopped receiving child support payments and so sought a new payment arrangement. *Patora III*.

12. Complainant's Third Complaint (*Potora III*) was dismissed after the Commission found no disputed issues of fact remained because the alleged loss of child support, taken as true, did not constitute a change of income warranting a new payment arrangement. *Potora III* at 8-9.

13. Complainant, "has a history of abusing the Commission's process" and has been "precluded from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Penn Natural Gas, Inc. until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings." *Potora III* at 9, 11.

14. On October 1, 2018, UGI Penn Natural Gas, Inc. (UGI Penn) was merged into UGI Gas. *See Joint Application of UGI Utils., Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.*, Docket Nos. A-2018-3000381, *et al.* (Order entered Sept. 20, 2018).

15. On September 21, 2023, the Commission entered an Order dismissing the Formal Complaint in *Potora v. UGI Utilities, Inc. – Gas Division.*, Docket No. C-2022-3036399 (Order entered Sept. 21, 2023) (*Potora IV*).

16. As of August 7, 2024, Ms. Potora has not paid her arrearages in full and has a balance in arrears with UGI Gas of \$6,218.93. UGI Gas new matter, ¶ 18.

DISCUSSION

Preliminary Objections

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.

Equitable Small Transp. Intervenors v. Equitable Gas Co., 1994 Pa.P.U.C. LEXIS 69 (Pa. P.U.C. 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. Commonwealth*, 490 A.2d 402 (Pa. 1985) (*County of Allegheny*). The Commission must view the complaint in this case in the light most favorable to Ms. Potora and should dismiss the complaint only if it appears that Ms. Potora would not be entitled to relief under any circumstances as a matter of law. *Equitable*; see also, *Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). The Commission must also view all well-pleaded facts in the complaint

and the response to preliminary objections to determine whether a request for relief is possible. *Wright v. PECO Energy Co.*, Docket No. C-2011-2253839 (Opinion and Order entered Dec. 15, 2011).

UGI Gas's preliminary objections are based on claimed legal insufficiency of the Formal Complaint. To grant UGI Gas's preliminary objection, I would need to accept that, even if all the facts set forth in the Formal Complaint are true, the Complainant fails to set forth a claim for which the Commission can grant relief as a matter of law. *Scott v. Metro. Edison Co.*, C-2009-2083345 (Initial Decision issued Mar. 20, 2009) (*Scott*). UGI Gas does not argue that the claims in Ms. Potora's Formal Complaint regarding billing and service issues are legally insufficient in and of themselves. Instead, UGI Gas argues that Ms. Potora's Formal Complaint is legally insufficient because the Commission has barred Ms. Potora from initiating informal or formal complaints against UGI Gas regarding the arrearages on her natural gas service account until those arrearages are paid in full. In this case, UGI Gas filed a new matter, asserting that Ms. Potora Complainant has not paid her arrearages in full and has a balance in arrears with UGI Gas of \$6,218.93 and nothing in the Formal Complaint establishes that Ms. Potora has paid in full the arrears on her account with UGI Gas. UGI Gas new matter, ¶¶ 18, 30. Ms. Potora did not file a response to UGI Gas's new matter. Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63(b). However, under the legal standards for preliminary objections, I must accept the allegations in Ms. Potora's Formal Complaint as true, rather than look to the basis of UGI Gas's new matter. *County of Allegheny; Scott*.

Preliminary objections in the form of legal insufficiency, also known as a demurrer, will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. *Cnty. Life Support Sys., Inc. v. Commonwealth*, 689 A.2d 1014 (Pa. Cmwlth. 1997). Any doubt must be resolved in favor of overruling a demurrer. *Id.*; see also, *Hoffman v. Misericordia Hosp. of Phila.*, 267 A.2d

867 (Pa. 1970) ("the question presented by the demurrer is whether on the facts averred, the law states with certainty that no recovery is possible").

Ms. Potora's Formal Complaint raises billing and service issues regarding her account with UGI Gas. Viewing Ms. Potora's Formal Complaint through the standards for evaluating preliminary objections, Ms. Potora's claims regarding her billing and service issues clearly have a legal basis by which the Commission could grant her relief if her claims are true. *See, e.g.*, 52 Pa. Code §§ 56.1 – 56.461; 66 Pa.C.S §§ 1401-1419. Additionally, even accepting the basis of UGI Gas's contention that Ms. Potora's Formal Complaint is legally insufficient because she has not paid her arrears per *Potora III*, under the standards of evaluating preliminary objections, I must look to Ms. Potora's Formal Complaint rather than UGI Gas's pleadings in evaluating the preliminary objections. Ms. Potora's Formal Complaint does not indicate whether or not she has paid her arrearages in full so as to be eligible to file informal or formal complaints against UGI Gas. For these reasons, UGI Gas's preliminary objections are denied on the basis of legal insufficiency of the Formal Complaint.

Motion for Judgement on the Pleadings

Although UGI Gas filed preliminary objections against Ms. Potora's Formal Complaint, it would be more appropriate to treat the preliminary objections as a motion for judgment on the pleadings. The Commission treats pleadings by what is reflected in their content instead of what they are labelled, including treating preliminary objections as a motion for judgment on the pleadings. *Mattu v. West Penn Power Co.*, C-2016-2547322 (Opinion and Order entered July 14, 2017). As long as the parties' rights are not negatively affected and due process has been provided, there is no bar to changing the designation of a document to more accurately reflect its content and purpose. *Id.* (citing 52 Pa. Code § 1.2).

In this instance, I find it more appropriate to treat UGI Gas's preliminary objections as a motion for judgment on the pleadings. 52 Pa. Code § 1.2. For the reasons discussed above, preliminary objections alleging legal insufficiency are inappropriate here. However, UGI Gas raises unopposed factual allegations in its new matter that implicate the Commission's decision in *Potora III* that bar Ms. Potora from filing further Formal Complaints against UGI Gas regarding arrearages. In this case, UGI Gas's new matter included a notice to plead, and Ms. Potora did not respond to the new matter. As stated above, failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63(b). Although the response period for a motion for judgment on the pleadings is 20 days, rather than 10 days for preliminary objections, by order entered on August 29, 2024, Ms. Potora was provided 27 days to respond to the preliminary objections. Therefore, I find that Ms. Potora was provided a full and fair opportunity to respond to UGI Gas's pleadings.

The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). Section 5.102 of the Commission's Rules provides in relevant part:

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary

judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.*

The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(3) *Form of decision.* The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order.

52 Pa. Code § 5.102(a), (b), (d)(1), (d)(3). All of the non-moving party's well-pleaded allegations must be viewed as true for purposes of deciding the motion, and only those facts specifically admitted may be considered against the non-moving party. *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. 1995). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Id.* Any doubt must be resolved in favor of the non-moving party by refusing to sustain the motion. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super 1985).

Pursuant to 52 Pa. Code § 5.63(b), I accept as fact UGI Gas's unopposed allegation in its new matter that as of August 7, 2024 Ms. Potora has not paid her arrearages in full and has a balance in arrears with UGI Gas of \$6,218.93. UGI Gas new matter, ¶ 18. Similar to Ms. Potora's Formal Complaints in *Potora I, II, III, and IV*, here, Ms. Potora's allegations again concern her arrears with UGI Gas. In response to UGI Gas's preliminary

objections, Ms. Potora further confirms that the purpose of her Formal Complaint is to address her arrears, i.e., she is requesting a payment arrangement. The purpose of a payment arrangement is to resolve an unpaid balance, i.e., arrears. 66 Pa.C.S. § 1405(b). Further, by definition, a payment arrangement is, “[a]n agreement whereby a customer *who admits liability for billed service* is permitted to amortize or pay the unpaid balance of the account in one or more payments.” 66 Pa.C.S. § 1403 (emphasis added). In the present case, not only did Ms. Potora not dispute the allegation raised in new matter that she has not paid her arrears, but by seeking a Commission-issued payment arrangement, Ms. Potora is also admitting she owes those arrears. Based on these facts, Ms. Potora is still barred from filing new informal or formal complaints with the Commission regarding arrearages on her gas service account “until all arrearages are paid in full.”¹ *Potora III*.

When there are no disputed questions of fact and the case to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593 (Pa. Cmwlth. 2003); *Diamond Energy, Inc. v. Pa. Pub. Util. Comm’n*, 653 A.2d 1360 (Pa. Cmwlth. 1995); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 557 (Pa. Cmwlth. 1989). The Commission may dismiss a complaint without a hearing if it is not necessary or in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d). The Commission’s decision in *Potora III*, barring Ms. Potora from filing further Formal Complaints regarding her arrearages with UGI Gas, remains in effect and applicable to this proceeding, and I can find no reason why allowing Ms. Potora’s Formal Complaint to proceed would otherwise be in the public interest. Accordingly, UGI Gas’s motion for judgment on the pleadings is granted and Ms. Potora’s Formal Complaint is dismissed.

¹ Although the decision in *Potora III* refers to UGI Penn, UGI Penn was merged into UGI Gas on October 1, 2018. See *Joint Application of UGI Utils., Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.*, Docket No. A-2018-3000381 (Order entered Sept. 20, 2018).

CONCLUSIONS OF LAW

1. 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.
2. 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. Commonwealth*, 490 A.2d 402 (Pa. 1985).
3. The Commission must view the complaint in this case in the light most favorable to Ms. Potora and should dismiss the complaint only if it appears that Ms. Potora would not be entitled to relief under any circumstances as a matter of law. *Equitable; see also, Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979).
4. The Commission must also view all well-pleaded facts in the complaint and the response to preliminary objections to determine whether a request for relief is possible. *Wright v. PECO Energy Co.*, Docket No. C-2011-2253839 (Opinion and Order entered Dec. 15, 2011).
5. Preliminary objections in the form of legal insufficiency, also known as a demurrer, will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. *Cnty. Life Support Sys., Inc. v. Commonwealth*, 689 A.2d 1014 (Pa. Cmwlth. 1997). Any doubt must be resolved in favor of overruling a demurrer. *Id.*; *see also, Hoffman v. Misericordia Hosp. of Phila.*, 267 A.2d 867 (Pa. 1970).
6. Ms. Potora's claims regarding her billing and service issues have a legal basis by which the Commission could grant her relief if her claims are true. *See, e.g.*, 52 Pa. Code §§ 56.1 – 56.461; 66 Pa.C.S §§ 1401-1419.

7. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

8. Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63(b).

9. As long as the parties' rights are not negatively affected and due process has been provided, there is no bar to changing the designation of a document to more accurately reflect its content and purpose. *Mattu v. West Penn Power Co.*, C-2016-2547322 (Opinion and Order entered July 14, 2017) (citing 52 Pa. Code § 1.2).

10. Ms. Potora is precluded from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for gas service rendered by UGI Utilities, Inc. – Gas Division until all arrearages are paid in full and the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings. *Potora v. UGI Penn Nat. Gas, Inc.*, Docket No. C-2018-3003485 (Opinion and Order entered Aug. 8, 2019).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Judgment on the Pleadings filed by UGI Utilities, Inc. – Gas Division at Docket Number C-2024-3050151 is granted.

