

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sarah Aed

v.

UGI Utilities, Inc.

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C-2024-3047793

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Formal Complaint of Sarah Aed because she failed to satisfy her burden of proving that UGI Utilities, Inc. violated its Commission-approved tariff, the Public Utility Code, or a Commission Regulation or Order.

**HISTORY OF THE PROCEEDING**

On March 25, 2024, Sarah Aed (Ms. Aed or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI or Respondent). The Complainant is disputing the allowance of the Weather Normalization Adjustment (WNA) on her gas bill.

On April 16, 2024, UGI filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, UGI admitted in part and denied in part various material allegations of the Complaint. UGI admitted that it applied a WNA to the Complainant's bill. In its New Matter, UGI averred, *inter alia*, that its WNA became effective on October 29, 2022, pursuant to the Commission-approved settlement in UGI's 2022 base rate case and its Commission-approved tariff. *See Pa. PUC v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); Rider C, Supp. No. 37 to UGI Gas – Pa. P.U.C. No. 7, Third Revised Page No. 53. UGI argued that it cannot be held liable for complying with its Commission-approved tariff and requested that the Complaint be dismissed.

The Complainant's Answer to UGI's New Matter was due within twenty days of the date of service of the Answer with New Matter. 52 Pa. Code § 5.63(a). The Complainant did not file an Answer to UGI's New Matter.

Also on April 16, 2024, UGI filed a Preliminary Objection to the Complaint along with a Notice to Plead. In its Preliminary Objection, UGI reiterated its argument that it cannot be held liable for complying with its Commission-approved tariff and requested that the Complaint be dismissed.

The Complainant's Answer to UGI's Preliminary Objection was due within ten days of the date of service of the Preliminary Objection. 52 Pa. Code § 5.101. The Complainant did not file an Answer to UGI's Preliminary Objection.

By Hearing Notice dated April 18, 2024, an Initial Call-In Telephonic Hearing was scheduled for June 4, 2024, and the matter was assigned to me.

A Prehearing Order was issued on May 2, 2024, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On May 9, 2024, UGI filed a letter and Motion requesting the evidentiary hearing be rescheduled and converted to a prehearing conference in order to discuss a litigation schedule. UGI represented that the Complainant did not object to the request to reschedule.

By Cancelled/Rescheduled Initial Telephonic Hearing Notice dated May 31, 2024, an Initial Call-In Telephonic Hearing was rescheduled for August 12, 2024.

On August 12, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Peter J. Kramer, Esquire, appeared on behalf of UGI and presented the testimony of one witness, Kimberly Bassinsky, a Principal Analyst at UGI. Ms. Bassinsky sponsored two exhibits, which were admitted into the record without objection.

The record closed on August 29, 2024, upon the filing of the transcript with the Commission.

### FINDINGS OF FACT

1. The Complainant is Sarah Aed.
2. The Respondent is UGI Utilities, Inc., a utility under the jurisdiction of the Pennsylvania Public Utility Commission.

3. The Complainant resides and receives gas service from UGI at 67 Lackawanna Ave., Swoyersville, PA 18704 (Service Address). Tr. 5-6.

4. A Weather Normalization Adjustment has been applied to the Complainant's bills since October 14, 2022. Tr. 14-15; UGI Exh. 2.

## DISCUSSION

### Preliminary Objection

The Commission's Rules of Administrative Practice and Procedure provide 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 Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). The Commission's Rules provide, in relevant part:

#### **§ 5.101. Preliminary objections.**

(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 the proceeding.

52 Pa. Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor Gen. v. State Emp.'s Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party (Ms. Aed) by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emp.'s Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

In this case, UGI filed a preliminary objection based on the position that the Complaint is legally insufficient because a utility cannot be held liable for complying with its Commission-approved tariff. However, whether UGI complied with its tariff is not the issue here. Rather, the Complaint is against the tariff itself. Specifically, the Complaint disputes the Commission approval of the WNA provision.

The Commission must view the Complaint in the light most favorable to the Complainant and should dismiss the Complaint, or portions of it, only if it appears that the Complainant would not be entitled to relief under any circumstance as a matter of law. Here, Ms. Aed alleges that WNA provision of UGI's tariff is unreasonable. When

viewing these averments as true for purposes of the Preliminary Objection, it is clear that recovery or relief would be possible for the Complainant. Accordingly, I conclude that UGI has failed to show that the Complaint is legally insufficient, and the Preliminary Objection is denied.

### Weather Normalization Adjustment

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a 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.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A complainant can meet that burden if she presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Finally, a Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

In this matter, UGI is applying the WNA to Ms. Aed's bills in accordance with its Commission-approved tariff, Rider C, Supp. No. 37 to UGI Gas – Pa. P.U.C. No. 7, Third Revised Page No. 53. Ms. Aed filed the Complaint because she objects to the WNA. However, Ms. Aed did not present any evidence in support of her Complaint other than her own statement that she disagrees with the WNA being charged. Tr. 9. To the contrary, through its witness and exhibits, UGI provided a detailed explanation demonstrating that the Complainant's Weather Normalization Adjustments were calculated and applied in accordance with the formulas set forth in its tariff. Tr. 14-21; UGI Exhs. 2, 3.

The Complainant's opinion alone is insufficient to overcome the *prima facie* reasonableness of the Commission-approved tariff. *Kirby v. PPL Elec. Utils. Corp.*,

Docket No. C-20066297 (Final Order entered Nov. 16, 2006). Thus, I find the Complainant failed to satisfy her burden of proving that UGI violated its tariff, the Public Utility Code, or a Commission Regulation or Order. Accordingly, the Complaint will be denied.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101.

3. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

4. Preliminary objections are available to parties and may be filed in response to a pleading when there is legal insufficiency of a pleading. 52 Pa. Code § 5.101(a)(4).

5. When viewing the averments of the Complainant as true for purposes of the Preliminary Objection, recovery or relief would be possible for the Complainant and the Preliminary Objection must be denied. *Dept. of Auditor Gen. v. State Emp.'s Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996); *Ridge v. State Emp.'s Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

6. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

7. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

8. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit a complainant to sustain her burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006).

9. The Complainant has failed to satisfy her burden of proving that UGI violated its tariff, the Public Utility Code, or a Commission regulation or Order. 66 Pa.C.S. § 701.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Sarah Aed at Sarah Aed v. UGI Utilities, Inc., Docket No. C-2024-3047793, is denied.

