
Nicholas A. Stobbe

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File #: 209826

December 5, 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: Jane Merolla v. UGI Utilities, Inc. – Gas Division
Docket No. C-2024-3052131

Dear Secretary Chiavetta:

Attached for filing are the Preliminary Objections of UGI Utilities, Inc. – Gas Division to the Complaint of Jane Merolla in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully,



Nicholas A. Stobbe

NAS/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

Jane Merolla
349 W Main Street
Dalton, PA 18414
janemero@aol.com

Date: December 5, 2024



Nicholas A. Stobbe


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jane Merolla,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3052131
	:	
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 OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS 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: December 5, 2024

Counsel for UGI Utilities, Inc. – Gas Division

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jane Merolla,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3052131
	:	
UGI Utilities, Inc. – Gas Division,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
UGI UTILITIES, INC. – GAS DIVISION TO THE COMPLAINT OF
JANE MEROLLA**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes UGI Utilities, Inc. – Gas Division (“UGI Gas” or the “Company”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that: (1) the portion of the Complaint requesting damages be dismissed because the Commission has no authority to award damages; and (2) the portion of the Complaint requesting reimbursement for attorney fees be dismissed because the Commission has no authority to award attorney fees.

In support thereof, UGI Gas states as follows:

I. BACKGROUND

1. UGI Utilities, Inc. (“UGI Utilities”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and a wholly owned subsidiary of UGI Corporation.

2. UGI Utilities has two divisions – the Gas Division (UGI Gas) and the Electric Division (“UGI Electric”).

3. On November 15, 2024, UGI Gas was served with the above-captioned Complaint. The issues raised in the Complaint relate to a dispute regarding UGI Gas’s termination of the Complainant’s gas service on November 14, 2024. (Complaint ¶¶ 4-5.)

4. As relief, the Complainant requests, among other things, “reimbursement for hotel stays...” and “attorney fees.” (Complaint ¶ 5.)

5. UGI Gas herein files these Preliminary Objections to the Complaint. For the reasons explained below, UGI Gas respectfully requests that the portion of the Complaint requesting damages be dismissed pursuant to Section 5.101(a)(2) of the Commission’s regulations because the Commission has no authority to award damages, 52 Pa. Code § 5.101(a)(2). Similarly, the Company respectfully requests that the portion of the Complaint requesting attorney fees be dismissed pursuant to Section 5.101(a)(2) of the Commission’s regulations because the Commission does not have jurisdiction to award attorney fees, 52 Pa. Code § 5.101(a)(2).

II. STANDARD OF REVIEW

6. 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 a 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).

7. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonable deducible therefrom. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. v. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed*, 974 A.2d 491 (Pa. 2009). 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. 2008), *affirmed*, 963 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

8. 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) (citation omitted). 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) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super 1992)).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINANT’S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES

9. UGI Gas incorporates by reference Paragraphs 1 through 8 as if fully set forth herein.

10. The portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

11. In the Complaint, the Complainant requests damages related to the Complainant's alleged stay at a hotel on unspecified dates. (Complaint ¶5.)

12. It is well-established that the Commission does not have the authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

13. Here, the Complainant's request for damages is impertinent matter "in the sense that it is irrelevant to [the] cause of action" because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013) (order sustaining preliminary objections). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g., id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No. C-2011-2264876, 2011 Pa. PUC LEXIS 652, at *8-9, 16-17 (Dec. 21, 2011), *adopted by Commission*, 2012 Pa. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at *8-9, 12 (Feb. 4, 2011), *adopted by Commission*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

14. Therefore, UGI Gas respectfully requests that the Complaint's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

B. PRELIMINARY OBJECTION NO. 2 – THE COMPLAINANT'S REQUEST FOR ATTORNEY FEES SHOULD BE DISMISSED BECAUSE THE COMMISSION DOES NOT HAVE THE POWER TO AWARD ATTORNEY FEES

15. UGI Gas incorporates by reference Paragraphs 1 through 14 as if fully set forth herein.

16. The portion of the Complaint requesting attorney fees should be dismissed because the Commission does have the power to award attorney fees.

17. In the Complaint, the Complainant seeks “any relief for attorney fees incurred.” (Complaint ¶5.)¹

18. It is well established that legal fees are not generally recoverable except where permitted by statute or other recognized exception to this general rule. *Corace v. Balint*, 418 Pa. 262, 271 (1965); *Becker v. Borough of Schuylkill Haven*, 200 Pa. Super. 305, 312 (1963); 11 Pa. Law Encyclopedia Damages § 33 (1970).

19. Nothing in the Commission's statutes, regulations or orders gives the Commission the power to grant attorney fees in the factual setting of the Complaint. *See Capitol Bus Company v. Leonard M. Smith*, Docket No. 20830, 1975 Pa. PUC LEXIS 24, 49 Pa. PUC 428 (Final Order entered Sept. 23, 1975) see also *Pa. PUC v. Duquesne Light Co.*, 61 Pa. P.U.C. 495 (1986); *Pa. PUC v. Nat'l Fuel Gas Distribution Corp.*, 63 Pa. P.U.C. 68, 71 (1987) (“[t]he Commission does not have jurisdiction to award attorney fees and costs”); *Edward Dugas v. PECO Energy Co.*, Docket No. Z-01417035, 2004 Pa. PUC LEXIS 50 (Initial Decision issued June 10, 2004) (“[t]he Commission was not empowered to award damages, attorney fees or costs”); *James H. Joseph v. The Bell Telephone Company of Pa.*, Docket No. C-00924568, 1993 Pa. PUC LEXIS 55 (“[t]he Commission is without authority to award attorney fees...”).

20. Here, the Complainant’s request for attorney fees is impertinent matter “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award attorney fees. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013) (order sustaining preliminary objections).

¹ UGI Gas notes that the Complainant did not list an attorney in response to Paragraph 10 of the Complaint, and no attorney has entered an appearance on the Complainant’s behalf.

21. Therefore, UGI Gas respectfully requests that the Complaint's request for attorney fees be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

CONCLUSION

WHEREFORE, UGI Utilities, Inc. – Gas Division respectfully requests that the Pennsylvania Public Utility Commission grant these Preliminary Objections.

Respectfully submitted,



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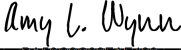
Dated: December 5, 2024

Counsel for UGI Utilities, Inc. – Gas Division

VERIFICATION

I, Amy L. Wynn, Senior Compliance Representative of 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: December 5, 2024

Signed by:

BA59C2C02FAF493...

Amy L. Wynn