

**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 :

**INITIAL DECISION**

Before  
John M. Coogan  
Administrative Law Judge

**INTRODUCTION**

The Complainant settled his Formal Complaints against Frontier Utilities Northeast LLC. The Complainant did not settle his Formal Complaints against UGI Utilities, Inc. – Gas Division. This Initial Decision sustains two Formal Complaints filed by Doug Wilson against UGI Utilities, Inc. – Gas Division and finds that UGI Utilities, Inc. – Gas Division violated Section 1501 of the Public Utility Code and 52 Pa. Code §§ 59.93 and 59.94 when it unreasonably failed to process four requests from Mr. Wilson to switch his natural gas supply service. A civil penalty of \$1,200 is imposed.

## HISTORY OF THE PROCEEDING

### *C-2024-3047554 – First Service Address*

On March 18, 2024, Doug Wilson (Mr. Wilson or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Frontier Utilities Northeast LLC (Frontier) regarding service to his address at 3817 Conestoga Road, Camp Hill, PA 17011. The Formal Complaint was served on both Frontier and UGI Utilities, Inc. – Gas Division (UGI) 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 also stated 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 he 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 was filed.

On April 8, 2024, UGI filed an answer to Mr. Wilson's Complaint at docket number C-2024-3047554. UGI admits that Mr. Wilson received 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, 2024 that were incomplete and missing necessary information. As a result, both of the requests

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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.

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 was filed.

#### *C-2024-3047576 - Second Service Address*

On March 19, 2024, Mr. Wilson filed a Formal Complaint against Frontier regarding service to his address at 885 Grandon Way, Mechanicsburg, PA 17050. The Formal Complaint was served on Frontier 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 also stated 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 was filed.

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. On May 29, 2024, I issued an order, granting UGI's preliminary objections filed at docket number C-2024-3047554, consolidating the proceedings at docket numbers C-2024-3047554 and C-2024-3047576, and joining UGI to docket number C-2024-3047576 as an indispensable party.

On June 18, 2024, UGI filed an answer to Mr. Wilson's Complaint at docket number C-2024-3047576. UGI admits that Mr. Wilson received 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, 2024 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.

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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.

Also on June 18, 2024, UGI filed preliminary objections to Mr. Wilson's Complaint at docket number C-2024-3047576. 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 was filed.

On July 10, 2024, I issued an order granting UGI's preliminary objections filed at docket number C-2024-3047576.

On July 15, 2024, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for September 16, 2024 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on July 16, 2024, setting forth various rules that would govern the September 16, 2024 evidentiary hearing.

On September 5, 2024, Frontier filed a certificate of satisfaction at Docket Numbers C-2024-3047554 and C-2024-3047576.

The initial hearing convened on September 16, 2024, as scheduled. Mr. Wilson appeared on his own behalf. Mr. Wilson did not move for admission of any exhibits into the record. Peter J. Kramer, Esquire appeared at the hearing on behalf of UGI, along with one witness for UGI: Jesse Tyahla, Director of Energy Supply and Planning. The following four exhibits were admitted into the record on behalf of UGI:

1. UGI Exhibit 1 – UGI Billing Statements
2. UGI Exhibit 2 – Electronic Data Interchange Transaction History
3. UGI Exhibit 3 – NGS Switch Confirmation Letters

#### 4. UGI Exhibit 4 – Tentative Order

The record in this case consists of the above-referenced exhibits and a transcript of 40 pages. The record closed on October 1, 2024 when the transcript and exhibits were filed with the Commission. For the reasons discussed below, the Formal Complaints will be sustained.

#### FINDINGS OF FACT

1. The Complainant in this case is Doug Wilson.
2. The first respondent in this case is Frontier Utilities Northeast LLC (Frontier).
3. The second respondent in this case is UGI Utilities, Inc. – Gas Division (UGI).
4. Frontier filed a Certificate of Satisfaction at Docket Nos. C-2024-3047554 and C-2024-3047576 on September 5, 2024.
5. The service address at issue at Docket No. C-2024-3047554 is 3817 Conestoga Road, Camp Hill, PA 17011 (First Service Address).
6. Mr. Wilson is the owner of the First Service Address.<sup>3</sup>

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<sup>3</sup> On October 4, 2024, I e-mailed counsel for UGI and Mr. Wilson, stating that, pursuant to 52 Pa. Code § 5.408, I intended to take judicial notice of fact that Mr. Wilson is the owner of 3817 Conestoga Road and Mr. Wilson is co-owner of 885 Grandon Way, along with Sandra Wilson. I ascertained these facts after review of Cumberland County's property records at <https://gis.ccpa.net/propertymapper/>. I informed parties that they may let me know if there are objections to my taking notice of these facts. No objections were received.

7. The service address at issue at Docket No. C-2024-3047576 is 885 Grandon Way, Mechanicsburg, PA 17050 (Second Service Address).

8. Mr. Wilson is a co-owner of the Second Service Address along with Sandra Wilson.<sup>4</sup>

9. Mr. Wilson contacted Frontier on December 12, 2023 to switch his natural gas supplier to both service addresses from Frontier to UGI (December 12 requests). Tr. 9-11; UGI Ex. 2.

10. On December 12, 2023, UGI received the December 12 requests directly from Frontier. Tr. 16; UGI Ex. 2.

11. On December 12, 2023, UGI rejected the December 12 requests because there was no reason given under the drop reason description. Tr. 16, 30-31; UGI Ex. 2.

12. Mr. Wilson contacted Frontier on February 27, 2024 to switch his NGS to both service addresses from Frontier to UGI (February 27 requests). Tr. 9-11; UGI Ex. 2.

13. On February 27, 2024, UGI received the February 27 requests directly from Frontier. Tr. 16; UGI Ex. 2.

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<sup>4</sup> See *supra* note 3.

14. On February 27, 2024, UGI rejected the February 27 requests because there was no reason given under the drop reason description. Tr. 30-31; UGI Ex. 2.

15. Mr. Wilson contacted Frontier on February 28, 2024 to switch his NGS to both service addresses from Frontier to UGI (February 28 requests). Tr. 9-11; UGI Ex. 2.

16. On February 29, 2024, UGI accepted the February 28, 2024 requests because the requests contained drop by customer request as the drop reason code. Tr. 16; UGI Ex. 2, 3.

17. Mr. Wilson's NGS service with Frontier ended on April 4, 2024. Tr. 16-17; UGI Ex. 3.

## DISCUSSION

### *Legal Standard*

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). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). 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 (1990). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701.

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 a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982). Moreover, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960).

The Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). The Code defines "service" as:

Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all

facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.

66 Pa.C.S. § 102.

When a natural gas distribution company (NGDC) is notified by a natural gas supplier (NGS) that a customer wishes to change his NGS, the NGDC shall send a NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. 52 Pa. Code § 59.93. A NGDC shall thereafter make the NGS change at the beginning of the first feasible billing period following a five day waiting period. 52 Pa. Code § 59.94; *Investigation of Pennsylvania's Retail Natural Gas Supply Market – Interim Guidelines Regarding Standards for Changing a Customer's Natural Gas Supplier*, Docket No. I-2013-2381742 (Tentative Order entered Aug. 26, 2021) (*Interim Guidelines*).

*Mr. Wilson's NGS Disenrollment Requests*

This proceeding concerns four separate requests made by Mr. Wilson to switch his NGS suppliers from Frontier to UGI: two separate requests made on December 12, 2023, for the service addresses at 3817 Conestoga Road and 885 Grandon Way, and two separate requests made on February 27, 2024, for the same service addresses. UGI Ex. 2. All requests were transmitted to UGI via Frontier at the initiation of Mr. Wilson. Tr. 11-12; UGI Ex. 2. As an initial matter, it should be noted that Mr. Wilson is no longer pursuing his Formal Complaints against Frontier. Certificates of Satisfaction were filed at both dockets by Frontier on September 5, 2024. However, Mr. Wilson's Formal Complaints against UGI have not been satisfied. Mr. Wilson asserts that UGI improperly rejected his requests to switch his NGS enrollment from Frontier to UGI. UGI defends its actions by asserting it rejected Mr. Wilsons requests on December 12, 2023, and February 27, 2024, because they were missing necessary

information to process the requests. Tr. 16. Mr. Wilson disputes UGI's defense, stating that the rejections were based on irrelevant information and that he should not have to give a reason for his requests. Tr. 35-36.

I find Mr. Wilson's testimony credible and conclude that he met his burden of proof that UGI provided him unreasonable service when it failed to process his requests to change his NGS on December 12, 2023 and February 27, 2024. I agree with Mr. Wilson that it is unreasonable that UGI rejected his requests to change his NGS simply because the reason provided was "other" and the drop reason description was not further detailed. Tr. 16, 30-31; UGI Ex. 2. At the hearing UGI provided no basis why a reason description was necessary information, or why "other" is an inadequate reason for Mr. Wilson's requests, as opposed to "dropped by customer request," which UGI accepted as a reason on February 29, 2024. Tr. 16; UGI Ex. 2, 3. UGI did not dispute that the December 12, 2023 or February 27, 2024 requests originated from Mr. Wilson or provide another convincing reason why Mr. Wilson's prior requests should have been rejected. Therefore, I find that UGI provided Mr. Wilson unreasonable service in these four instances in violation of 66 Pa.C.S. § 1501. I also find that UGI violated 52 Pa. Code §§ 59.93 and 59.94 where UGI failed to follow the necessary steps to switch Mr. Wilson's NGS service after receiving notice from Frontier that Mr. Wilson made requests on December 12, 2023, and February 27, 2024, to change his NGS service. Specifically, UGI rejected Mr. Wilson's requests and failed to send written notification to Mr. Wilson after the requests were made and making the NGS changes subsequent to a five-day waiting period. *See* 52 Pa. Code §§ 59.93, 59.94. Additionally, it is notable that Commission regulations only require an NGDC to verify the accuracy of the information provided by the NGS with at least two data elements, such as name and account number, or address and account number. 52 Pa. Code § 59.93(1). There was no contention from UGI that any such data elements were missing when it received the requests from Frontier.

In testimony, Mr. Wilson also raised the issue that it took over a month to switch his NGS service once his requests were ultimately accepted on February 29, 2024.<sup>5</sup> UGI's witness explained that Mr. Wilson's NGS service was not switched until April 4, 2024 because UGI needs to allow for a five day waiting period and then the switch cannot occur until the next scheduled meter reading date, which was April 2024. Tr. 18-20, 23-24; UGI Ex. 3, 4. I find that UGI did not violate the Public Utility Code or Commission regulations regarding the actions it took after accepting Mr. Wilson's requests to switch NGS service on February 29, 2024. As UGI's witness notes, there is a waiting period after a NGDC receives notice that a customer wishes to switch NGS service, and then the NGDC will make the change at the beginning of the first feasible billing period following the waiting period. 52 Pa. Code §§ 59.93, 59.94; *Interim Guidelines*. UGI's witness credibly testified and provided evidence that UGI did not implement the switch to Mr. Wilson's NGS until April 4, 2024 due to this waiting period and the subsequent need to wait until the next scheduled meter reading date. Tr. 18-20, 23-24; UGI Ex. 3, 4.

### *Civil Penalty*

Civil penalties may be imposed where violations of the Code and Commission regulations or a Commission Order are found. *See* 52 Pa. Code § 69.1201; *see also Rosi v. Bell-Atl. Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000). As explained above, UGI violated the Public Utility Code at 66 Pa.C.S. § 1501 and Commission regulations at 52 Pa. Code §§ 59.93 and 59.94 when it unreasonably failed to process four separate requests made by Mr. Wilson to switch NGS service.

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<sup>5</sup> This allegation was not raised in Mr. Wilson's Formal Complaints. Nonetheless, UGI did not object and actively defended against this allegation during the evidentiary hearing.

Having found four separate violations of the Code and Commission regulations, the Commission is authorized to impose a maximum civil penalty of \$1,000 per occurrence, per day. 66 Pa.C.S. § 3301. The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate. 52 Pa. Code § 69.1201.

These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) other relevant factors. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." *Id.* There is no evidence that the violations here were willful fraud or misrepresentations and therefore a lower penalty is warranted.

The second factor considers whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). "When consequences of a serious nature are involved, such as personal injury or property

damage, the consequences may warrant a higher penalty.” *Id.* The violation here did not result in personal injury or property damage. This supports a lower penalty.

The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). UGI’s witness testified that UGI intentionally did not accept Mr. Wilson’s requests because it found his requests to lack necessary information. This supports a higher penalty.

The fourth factor to be considered is whether UGI made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). UGI did not admit that the conduct at issue constitutes unreasonable service or was in violation of Commission regulations. This supports a higher penalty.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Although it is possible that other customers have had similar experiences to Mr. Wilson, the record is devoid of any such other similar incidents. Consequently, here, one customer was affected. This suggests that a lower penalty is warranted.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). The provision provides that “[a]n isolated incident from an otherwise compliant company may result in a lower penalty.” *Id.* Again, while it is possible that other customers have had similar experiences to Mr. Wilson, there is no basis in the record to show that UGI has an unfavorable compliance history regarding issues similar to those in this proceeding. This warrants a lower penalty.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). As an

investigation into the Company's practices was not instituted in this case, this factor is not applicable here.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Again, there is nothing in the record to show that the issues presented in this proceeding are a systemic problem, and therefore this factor suggests a lower penalty.

The ninth factor examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). No similar situations were found.

Finally, the tenth factor considers any other relevant factor. 52 Pa. Code § 69.1201(c)(10). I find it important to note that UGI's failure to process Mr. Wilson's requests were not without harm. As Mr. Wilson testified, UGI's failure to process his initial requests caused him to pay higher costs for his natural gas supply. Specifically, in each bill presented by UGI regarding the period in dispute, Frontier's natural gas supply cost was higher than UGI's price to compare. UGI Ex. 1. This factor warrants a higher penalty.

After considering the above factors, I find that a penalty of \$300 for each instance that UGI unreasonably rejected Mr. Wilson's request to switch NGS service is appropriate. UGI will be ordered to pay a total penalty of \$1,200.

#### *Request for Refund*

In his Formal Complaints, Mr. Wilson requested that he be refunded the difference in rates between Frontier and UGI for the three billing cycles after his cancellation request date of December 12, 2023. The Commission can order refunds for unjust or unreasonable rates received by a public utility, or rates received in violation of a

regulation or order of the Commission, or rates received in excess of the existing tariff of a public utility. 66 Pa.C.S. § 1312. Although I found that Mr. Wilson was provided with unreasonable service, the record does not support a finding that Mr. Wilson was charged unjust or unreasonable rates during the periods in dispute. Specifically, there is no allegation that the natural gas supply prices charged to Mr. Wilson during the period in dispute were not prices that Frontier was authorized to charge its NGS customers.

Instead, I find Mr. Wilson's requests for a refund to more appropriately be characterized as a request for damages for the unreasonable service provided by UGI in failing to switch his NGS service when he initially requested. The Commission does not have the authority to award damages. 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. Cmwlt 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. §§ 101-3316. 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. Therefore, Mr. Wilson's requests for a refund, i.e., damages, must be denied.

#### CONCLUSIONS OF LAW

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

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. 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 a 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).

5. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

6. “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).

7. 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 (1990).

8. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

9. The Pennsylvania Public Utility Code requires each public utility to provide reasonable and adequate service. 66 Pa.C.S. § 1501.

10. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

11. When a NGDC is notified by a NGS that a customer wishes to change his NGS, the NGDC shall send a NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. 52 Pa. Code § 59.93.

12. A NGDC shall thereafter make the NGS change at the beginning of the first feasible billing period following a 5-day waiting period. 52 Pa. Code § 59.94; *Investigation of Pennsylvania's Retail Natural Gas Supply Market – Interim Guidelines Regarding Standards for Changing a Customer's Natural Gas Supplier*, Docket No. I-2013-2381742 (Tentative Order entered Aug. 26, 2021).

13. The Complainant has established by a preponderance of the evidence that UGI violated 66 Pa.C.S. § 1501 and 52 Pa. Code §§ 59.93 and 59.94 when it failed to accept his requests to switch his natural gas supplier.

14. A civil penalty is warranted in this case because the Company violated 66 Pa.C.S. § 1501 and 52 Pa. Code §§ 59.93 and 59.94. *See* 66 Pa.C.S. § 3301.

15. 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).

16. 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. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaints of Doug Wilson at *Doug Wilson v. UGI Utilities, Inc. – Gas Division*, Docket Nos. C-2024-3047554 and C-2024-3047576, are sustained.

2. That, within thirty (30) days of the entry of a final Commission Order in this proceeding, Respondent UGI Utilities, Inc. – Gas Division shall remit one thousand two hundred dollars (\$1,200.00) as a civil penalty payable by certified check or

