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January 8, 2025

VIA ELECTRONIC FILING

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Doug Wilson v. Frontier Utilities Northeast LLC and UGI Utilities, Inc. – Gas
Division
Docket Nos. C-2024-3047554 and C-2024-3047576**

Dear Secretary Chiavetta:

Enclosed for filing are UGI Utilities, Inc. – Gas Division’s Exceptions to the Initial Decision in the above-captioned proceeding.

Copies are being provided as indicated below and on the Certificate of Service.

Respectfully submitted,


Devin Ryan

DR/sa
Attachments

cc: Certificate of Service
Honorable John M. Coogan (via Email jcoogan@pa.gov)
Office of Special Assistants (via Email ra-OSA@pa.gov)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing 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

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Date: January 8, 2025



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Doug Wilson,	:	
	:	
v.	:	Docket No. C-2024-3047554
	:	
Frontier Utilities Northeast LLC	:	
UGI Utilities, Inc. – Gas Division	:	
Doug Wilson,	:	
	:	
v.	:	Docket No. C-2024-3047576
	:	
Frontier Utilities Northeast LLC	:	
UGI Utilities, Inc. – Gas Division	:	

**EXCEPTIONS OF UGI UTILITIES, INC. – GAS DIVISION TO THE
INITIAL DECISION**

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Dated: January 8, 2025

Counsel for UGI Utilities, Inc. – Gas Division

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I. INTRODUCTION AND BACKGROUND

This case concerns two consolidated Formal Complaints filed by Doug Wilson (“Complainant”) against Frontier Utilities Northeast LLC (“Frontier”) and UGI Utilities, Inc. – Gas Division (“UGI Gas” or the “Company”) about the switching of the natural gas supplier (“NGS”) for his accounts at 3817 Conestoga Road, Camp Hill, PA 17011 (“Service Address 1”) and 885 Grandon Way, Mechanicsburg, PA 17050 (“Service Address 2”). UGI Gas was served with the Formal Complaint at Docket No. C-2024-3047554 concerning Service Address 1 on March 19, 2024, and was later joined as an indispensable party to the Formal Complaint proceeding at Docket No. C-2024-3047576. In the Complaints, the Complainant averred that it took too long for his requests to switch from Frontier to the Company’s default service to be completed. (ID at 2, 4-5.) As relief, the Complainant requested, among other things, that he be refunded the difference between the Frontier rate and the UGI Gas default service rate for the three billing cycles after he first asked Frontier on December 12, 2023, to switch him to the Company’s default service. (ID at 2, 5.) Before the hearing, Frontier filed a Certificate of Satisfaction, closing out the Complaints as against Frontier.

On December 19 2024, the Pennsylvania Public Utility Commission (“Commission”) issued Administrative Law Judge John M. Coogan’s (“ALJ”) Initial Decision (“ID”), sustaining the Complaints and imposing a civil penalty of \$1,200 against UGI Gas. The ID finds that UGI Gas violated 66 Pa. C.S. § 1501 and 52 Pa. Code §§ 59.93 and 59.94 by failing to process the Complainant’s requests to switch the Complainant to default service on December 12, 2023, and February 27, 2024, and only processing the switch request made on February 28, 2024. (ID at 13.)

As explained in these Exceptions, the Commission should reverse the ID and dismiss the Formal Complaints in their entirety and with prejudice. The ID’s findings rely on misinterpretations of fact and erroneous legal conclusions about the switching process, which, if

adopted by the Commission, would lead to unreasonable results, confusing public policy, and resulting in the need to revise Commission-established Electronic Data Interchange (“EDI”) transaction standards and UGI Gas’s Commission-approved Gas Choice Supplier Tariff.

Foremost, the ID is based on the faulty premise that the Company denied the switching requests because the Complainant failed to provide the required information to process the requests. In actuality, Frontier failed to provide the required information when submitting the switching requests on December 12, 2023, and February 27, 2024. Specifically, UGI Gas’s EDI system automatically rejected¹ Frontier’s switching requests on December 12, 2023, and February 27, 2024, because Frontier’s EDI transaction used “Other [A13]” as the “Drop Reason Code” and failed to include the additional information required in the EDI transaction stating a reason for the switching requests. Under the Commission’s well-established switching process developed by the Electronic Data Exchange Working Group (“EDEWG”),² which NGSs are required to use and comply with under UGI Gas’s Gas Choice Supplier Tariff,³ the “A13” (Other) code “must **only** be used when an existing error code does not convey the reason correctly.”⁴ Also, when the “A13”

¹ Tr. 34.

² See, e.g., *In re Standards for Electronic Data Transfer and Exchange*, 1998 WL 553021, Docket No. M-00960890, F.0015 (Order entered June 19, 1998); *Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies and Electric Generation Suppliers*, 1998 WL 835590, Docket No. M-00960890, F.0015 (Order entered Aug. 13, 1998); *Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies and Electric Generation Suppliers*, 1998 WL 34069141, Docket No. M-00960890, F.0015 (Order entered Nov. 4, 1998). The Commission has authorized natural gas distribution companies (“NGDCs”) to rely on EDI transaction standards to transmit data between NGDCs and NGSs. See note 3, *infra*; see also *In re PECO Energy Co.*, 2000 WL 348126, Docket No. P-00991769 (Order entered Jan. 27, 2000).

³ See Tariff Rule 4.6, UGI Gas – Pa. P.U.C. No. 7S, Original Page No. 114 (stating that a “Choice Supplier must comply with applicable communications standards, including approved internet based Electronic Data Interchange (EDI) procedures”); Tariff Rule 9.1, Supplement No. 37 to UGI Gas – Pa. P.U.C. No. 7S, Second Revised Page No. 125 (providing that “[t]o be served under Rate Schedules RT and NT, a Customer must be enrolled by the Choice Supplier elected by the Customer” and that “[s]uch enrollment by the Choice Supplier must be provided in an electronic file to the Company via an approved internet-based EDI transaction”).

⁴ *EDEWG Change Request #167*, p. 2, available at <https://www.puc.pa.gov/documents/edewg-files/2084/167.docx> (emphasis in original). To the extent necessary, UGI Gas respectfully requests that the Commission take official notice of the EDEWG Change Request forms on the Commission’s website, including *EDEWG Change Request #167*, which outline the codes that suppliers must use when making a switch request. See 52 Pa. Code § 5.408; 66 Pa. C.S. § 332(e).

(Other) code is used, there is an “Explanation Required in REF03 [Reference Identification 03].”⁵ Such explanation is necessary because “[e]ach time ‘A13’ (Other) is used for a new purpose, the utility must inform the EDI Work Group who will determine whether a new code is needed.”⁶

Here, the Complainant was requesting to return to default service, so Frontier should have used the established code “B38,” meaning “Dropped by Customer Request.”⁷ This “B38” code requires no other explanation or reason information in order to be processed by the EDI system. However, Frontier used the incorrect “A13” (Other) code and then failed to provide the required explanation when using code “A13” (Other). As a result, the logic of EDI system processing the request immediately determined the required field was missing information and rejected the request back to Frontier. This automated processing took just seconds to return the rejected transaction to Frontier.⁸ Moreover, this is how the Commission intended the EDI system to be designed and to work.

Thus, each time the Company’s EDI processing rejected Frontier’s switching requests, Frontier was informed that the requests were denied because Frontier used the “A13” code and failed to provide the required explanation. In other words, Frontier failed to provide a complete switching request to UGI Gas. As a licensed electric generation supplier (“EGS”)⁹ and NGS,¹⁰ Frontier should have known and was required to take the proper steps when coding switching requests and how to proceed with corrections. Instead of quickly fixing the deficiencies in its switching requests made on December 12, 2023, **Frontier waited 77 days** until February 27, 2024,

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ UGI Gas Exhibit No. 2, pp. 1, 8.

⁹ See *License Application of Frontier Utils. Northeast, LLC for Approval to Offer, Render, Furnish or Supply Elec. or Elec. Generation Servs. as a Supplier of Elec.*, Docket No. A-2013-2387060 (Order entered Jan. 9, 2014).

¹⁰ See *Application of Frontier Utils. Northeast, LLC to become a licensed supplier of natural gas servs. as a supplier*, Docket No. A-2013-2387088 (Order entered Jan. 9, 2014).

to submit the switching requests again. Even then, however, Frontier repeated its incomplete transaction by utilizing the same incorrect “A13” code and failing to provide a written explanation for using the “A13” code in the text box immediately under the reason code drop down menu selection. As a result, Frontier again received an EDI reject transaction indicating the rejection within seconds. It was only the next day, on February 28, 2024, when Frontier used the correct “B38” code, that the UGI Gas EDI system was able to accept and process the transaction, completing the Complainant’s switch to default service.

As such, UGI Gas should not be held in violation for following the established EDI switching transaction rules, which the Company must follow under its Commission-approved Gas Choice Supplier Tariff and which dictated rejection of Frontier’s faulty and incomplete switching requests. Frontier’s EDI switching requests were facially defective, so the Company’s EDI system properly rejected those requests. In particular, Sections 59.93 and 59.94 of the Commission’s regulations do not modify or eliminate these EDI transaction processing requirements.¹¹ To hold otherwise would upend the Commission’s well-established switching process, and switching process logic, by creating new EDI rules for every electric distribution company (“EDC”) and NGDC to: (1) process any switching request from an EGS or NGS using the “A13” code without the required explanation; and (2) send communications to customers informing them that the defective switching requests will be processed, even though the EDI system would reject them pursuant to the adopted EDEWG standards. Such an outcome would lead to unreasonable results, like rendering moot the reason the “A13” (Other) code exists - as a means of identifying and tracking differing reasons, which may subsequently be adopted by EDEWG as new standard codes (based on the error reason that must be provided in conjunction with the “A13” code). Given that

¹¹ See 52 Pa. Code §§ 59.93, 59.94.

the switching codes have been developed and are used across multiple jurisdictions,¹² such changes must be made through that industry-wide, collaborative process, not an individual formal complaint proceeding.

Lastly, at the very least, UGI Gas should not be assessed a civil penalty. The \$1,200 civil penalty is based on the erroneous conclusion that the Company violated the Public Utility Code and the Commission's regulations. As noted previously, the Company's EDI program followed the proper rules and EDI logic governing the switching process, including UGI Gas's Gas Choice Supplier Tariff. Any fault lies with Frontier, who within seconds could see the rejected switch requests in its EDI system, including the reason for such rejection, and could have taken immediate corrective action (to submit a request that complied with the existing EDEWG switching standards). Furthermore, even assuming *arguendo* that there was a violation, the ID did not appropriately apply the *Rosi* factors. When those factors are appropriately applied to the facts of this case, no penalty is warranted. Also, because the Company was complying with its Commission-approved Gas Choice Supplier Tariff, 66 Pa. C.S. § 3303(a) bars the imposition of any civil penalty.

For these reasons, and as explained in more detail below, UGI Gas respectfully requests that the Commission grant these Exceptions, reverse the ID, and dismiss the Complaints with prejudice.

¹² *EDEWG Change Request #167*, p. 2, available at <https://www.puc.pa.gov/documents/edewg-files/2084/167.docx> (specifying conditions for using certain codes in New Jersey and Maryland in addition to Pennsylvania).

II. EXCEPTIONS

A. EXCEPTION NO. 1: THE COMMISSION SHOULD REVERSE THE ID BECAUSE UGI GAS FOLLOWED THE COMMISSION’S WELL-ESTABLISHED EDI TRANSACTION SWITCHING PROCESS WHEN REJECTING FRONTIER’S FAULTY AND INCOMPLETE SWITCHING REQUESTS (ID AT 1, 12-15, 20-22; CONCLUSIONS OF LAW NOS. 13 AND 14).

The ID erroneously concludes that the Company violated 66 Pa. C.S. § 1501 and 52 Pa. Code §§ 59.93 and 59.94 by failing to process Frontier’s switching requests on December 12, 2023, and February 27, 2024, when Frontier used “Other [A13]” as the “Drop Reason Code” in its EDI transactions but failed to provide the required information in the “reason” field for the switching requests. (ID at 12-13; UGI Gas Exhibit No. 2, pp. 2-5, 9-12; *see* Tr. at 30-33.) According to the ID, “it is unreasonable that UGI rejected [the Complainant’s] requests to change his NGS simply because the reason provided was ‘other’ and the drop reason description was not further detailed.” (ID at 13.) The ID further errs in finding 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.” (ID at 13.)

As explained in the following sections, UGI Gas properly complied with the Commission’s switching process and did not violate 66 Pa. C.S. § 1501 and 52 Pa. Code §§ 59.93 and 59.94. Although the ID frames the issues as UGI denying the Complainant’s switching requests for failure to provide the required information,¹³ the Company’s EDI system actually denied Frontier’s switching requests on behalf of the Complainant because Frontier failed to provide all of the required information when submitting the EDI transaction switching requests on December 12, 2023, and February 27, 2024. (ID at 12-13; Tr. at 30-33; UGI Gas Exhibit No. 2, pp. 2-5, 9-12.)

¹³ ID at 12-13.

Because Frontier’s switching requests were facially defective by lacking required EDI transaction information, the Company did not provide unreasonable service by processing an automated denial EDI transaction for those requests. Moreover, UGI Gas’s EDI system provided the proper EDI return rejection transaction to Frontier within seconds,¹⁴ yet Frontier delayed its corrective action for 77 days. Due to these obvious defects with Frontier’s EDI transaction requests, UGI Gas was not required to comply with Sections 59.93 and 59.94 of the Commission’s regulations (in a manner that contradicted the EDEWG switching standards) by processing the switch back to default service or sending the Complainant a communication that the switch was occurring.

1. The ID Errs in Determining that UGI Gas Violated Section 1501 of the Public Utility Code

The ID incorrectly finds that UGI Gas provided unreasonable service in violation of Section 1501 of the Public Utility Code by denying Frontier’s inaccurate and incomplete switching requests. (ID at 12-13, 20.) Frontier submitted the switching requests at issue on December 12, 2023, and February 27, 2024. (UGI Gas Exhibit No. 2, pp. 2-5, 9-12.) In all of those requests, Frontier used “Other [A13]” as the “Drop Reason Code.” (UGI Gas Exhibit No. 2, pp. 2-5, 9-12; *see* Tr. at 30-33.) Under the well-established switching process EDI transaction rules,¹⁵ which NGSs are required to use and comply with under UGI Gas’s Gas Choice Supplier Tariff,¹⁶ the “A13” code “must **only** be used when an existing error code does not convey the reason correctly.”¹⁷ Further, when the “A13” code is used, there is an “Explanation Required in REF03

¹⁴ UGI Gas Exhibit No. 2, pp. 1, 8.

¹⁵ *See* note 2, *supra*.

¹⁶ *See* Tariff Rule 4.6, UGI Gas – Pa. P.U.C. No. 7S, Original Page No. 114 (stating that a “Choice Supplier must comply with applicable communications standards, including approved internet based Electronic Data Interchange (EDI) procedures”); Tariff Rule 9.1, Supplement No. 37 to UGI Gas – Pa. P.U.C. No. 7S, Second Revised Page No. 125 (providing that “[t]o be served under Rate Schedules RT and NT, a Customer must be enrolled by the Choice Supplier elected by the Customer” and that “[s]uch enrollment by the Choice Supplier must be provided in an electronic file to the Company via an approved internet-based EDI transaction”).

¹⁷ *EDEWG Change Request #167*, p. 2, available at <https://www.puc.pa.gov/documents/edewg-files/2084/167.docx> (emphasis in original). As noted previously, to the extent necessary, UGI Gas respectfully

[Reference Identification 03].”¹⁸ Such explanation is necessary because “[e]ach time ‘A13’ (Other) is used for a new purpose, the utility must inform the EDI Work Group who will determine whether a new code is needed.”¹⁹ On the other hand, when a customer is requesting to drop the supplier, the supplier should use code “B38,” i.e., “Dropped by Customer.”²⁰

Here, the Complainant was requesting to return to default service. (ID at 12.) Therefore, Frontier should have used code “B38,” meaning “Dropped by Customer Request.”²¹ Yet, Frontier incorrectly used the “A13” code and then compounded that error by not providing information in the required explanation field, resulting in the EDI system logic rejecting the transaction. (UGI Gas Exhibit No. 2, pp. 2-5, 9-12.) As a licensed EGS²² and NGS,²³ Frontier should have known and was required to take the proper steps when making these switching requests.

Also, every time the Company rejected Frontier’s switching requests, UGI Gas informed Frontier via a return EDI transaction which was processed within seconds that the requests were denied because Frontier used the “A13” code and failed to provide the required explanation. (UGI Gas Exhibit No. 2, pp. 1-5, 8-12; Tr. 17, 34.) Rather than quickly correcting the errors in its switching requests made on December 12, 2023 (which could have taken minutes to complete), Frontier waited 77 days (i.e., until February 27, 2024), to submit the switching requests again. (UGI Gas Exhibit No. 2, pp. 2-5, 9-12; Tr. 16.) Then, when resubmitting those requests, Frontier repeated its errors by utilizing the incorrect “A13” (Other) code and failing to provide information

requests that the Commission take official notice of the EDEWG Change Request forms on the Commission’s website, including *EDEWG Change Request #167*, which outline the codes that suppliers must use when making a switch request. See 52 Pa. Code § 5.408; 66 Pa. C.S. § 332(e).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See *EDEWG Change Request #167*, p. 2, available at <https://www.puc.pa.gov/documents/edewg-files/2084/167.docx> (emphasis in original); Tr. 16, 37.

²² See note 9, *supra*.

²³ See note 10, *supra*.

in the required explanation field for the switch. (UGI Gas Exhibit No. 2, pp. 2-5, 9-12.) As soon as Frontier followed the proper EDI procedures and used the correct “B38” code on February 28, 2024, UGI Gas’s EDI system was able to process the Complainant’s switch to default service successfully.²⁴ (UGI Gas Exhibit No. 2, pp. 6-7, 13-14.)

For these reasons, UGI Gas followed the correct switching procedures as maintained within its EDI system and as specified in EDEWG’s switching standards by rejecting Frontier’s faulty and incomplete switching EDI requests. As such, the ID errs in finding that the Complainant sustained his burden of proof that the Company violated Section 1501 of the Public Utility Code.

2. The ID Incorrectly Finds that UGI Gas Violated Sections 59.93 and 59.94 of the Commission’s Regulations

The ID also erroneously concludes that UGI Gas violated Section 59.93 and 59.94 of the Commission’s regulations. (ID at 13, 20.) Those regulations provide as follows:

When a contact occurs between a customer and an NGS to request a change of the NGS, upon receiving direct oral confirmation or written authorization from the customer to change the NGS, the customer’s new NGS shall:

(1) Notify the NGDC of the customer’s NGS selection by the end of the next business day following completion of the application process. The NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records.

(2) Upon receipt of this notification, the NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. This letter shall include notice of a 10-day waiting period in which the order may be canceled before the change of the NGS takes place. The notice shall include the date service with the new NGS will begin unless the customer contacts the NGDC to cancel the change. The 10-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next

²⁴ The Complainant ultimately was returned to default service on “April 4, 2024 due to this waiting period and the subsequent need to wait until the next scheduled meter reading date.” (ID at 14.)

business day following the receipt of the notification of the customer's selection of a NGS.²⁵

...

When a customer has provided the NGS with oral confirmation or written authorization to change NGSs, the NGDC shall make the change at the beginning of the first feasible billing period following the 10-day waiting period, as prescribed in § 59.93 (relating to customer contacts with NGSs).²⁶

Based on those regulations, the ID claims that “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.” (ID at 13) (citing 52 Pa. Code §§ 59.93, 59.94). Moreover, the ID asserts that the “Commission[’s] 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. (ID at 13) (citing 52 Pa. Code § 59.93(1)).

In actuality, the requirements of Sections 59.93 and 59.94 of the Commission’s regulations are a series of steps that cannot be viewed or taken out of order. When, as here, the NGS fails to comply with the first step in the sequence, the following step that must be taken by the NGDC is for the NGDC to notice the NGS of the defect in the switching request, such that the NGS may correct the deficiency and comply with the first step. Specifically, the first step is that the NGS must “[n]otify the NGDC of the customer’s NGS selection by the end of the next business day following completion of the application process.” 52 Pa. Code § 59.93(1). In this case, Frontier’s notifications to UGI Gas, through the established EDI transaction process, were facially defective and did not meet required Commission-approved EDI standards as put forth by the EDEWG and as incorporated in UGI Gas’s Commission-approved Gas Choice Supplier Tariff.²⁷ Accordingly,

²⁵ 52 Pa. Code § 59.93.

²⁶ 52 Pa. Code § 59.94.

²⁷ See note 16, *supra*.

Frontier did not meet its obligations pursuant to Section 59.93(1) and the Gas Choice Supplier Tariff that are required for UGI Gas to then proceed with processing the switch transactions. As explained in the prior section, Frontier utilized the incorrect “A13” (Other) code and failed to provide information in the required field to provide an explanation for the switch when it used that code. Because of those defects, UGI Gas’s EDI system could not process the switching requests and returned the rejected EDI transactions to Frontier within seconds (as designed and intended by the EDI standards). Once Frontier corrected those errors, the switches could then be processed by UGI Gas. Thus, due to Frontier’s clear failure to execute the first step of the switching process requirements outlined in Section 59.93 of the Commission’s regulations, all subsequent steps set forth in those regulations could not be taken.²⁸

Yet, under the ID’s interpretation, the utility must process a switching request pursuant to Section 59.94, along with sending the customer a communication that the switch will occur under Section 59.93(2), even when the request is facially defective and fails to comply with the established EDI transaction rules. 52 Pa. Code §§ 59.93(2), 59.94; (*see* ID at 12). If the Commission were to uphold the ID, the Commission’s decision would render the “A13” (Other) code meaningless and require changes to the Company’s Commission-approved Gas Choice Supplier Tariff. However, switching codes have been developed and are used across multiple jurisdictions, and the Company’s Gas Choice Supplier Tariff has been vetted and approved in Commission proceedings with wide stakeholder involvement.²⁹ Therefore, any changes are to be

²⁸ It is important to note that Section 59.94 interlocks with Section 59.93, stating that the Company shall make the change “as prescribed in § 59.93 (relating to customer contacts with NGSs).” 52 Pa. Code § 59.94.

²⁹ *EDEWG Change Request #167*, p. 2, available at <https://www.puc.pa.gov/documents/edewg-files/2084/167.docx> (specifying conditions for using certain codes in New Jersey and Maryland in addition to Pennsylvania).

made through industry-wide, collaborative processes, not an individual formal complaint proceeding.

In conclusion, UGI Gas was not required, and should not be expected, to take the steps outlined in Sections 59.93 and 59.94 of the Commission's regulations when, as in this case, the switching requests are facially defective. Therefore, the ID incorrectly determines that the Complainant sustained his burden of proof that UGI Gas violated 52 Pa. Code §§ 59.93 and 59.94.

Based on the foregoing, UGI Gas respectfully requests that the Commission grant Exception No. 1, reverse the ID, and dismiss the Complaints with prejudice.

B. EXCEPTION NO. 2: THE COMMISSION SHOULD REVERSE THE ID'S IMPOSITION OF A CIVIL PENALTY BECAUSE THE PURPORTED JUSTIFICATION FOR THAT CIVIL PENALTY LACKS FACTUAL AND LEGAL SUPPORT (ID AT 14-17; CONCLUSION OF LAW NO. 14).

For the reasons stated above, the Company did not violate 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.93 and 59.94, and the Commission should modify the ID to eliminate the imposition of a civil penalty of \$1,200 because the ID's alleged support of the civil penalty lacks factual and legal support.

After finding that the Company committed a violation, the ID applied the ten factors (the *Rosi* factors) set forth in the Commission's Policy Statement for evaluating whether a civil penalty should be imposed for violating a Commission order, regulation, or statute. (ID at 15-17.) These factors are: (1) whether the conduct at issue was of a serious nature; (2) whether the resulting consequences of the conduct at issue were of a serious nature; (3) whether the conduct at issue was deemed intentional or negligent; (4) 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; (5) the number of customers affected and the duration of the violation; (6) the compliance history of the regulated entity that committed the violation; (7) whether the regulated entity cooperated

with the Commission’s investigation; (8) the amount of the civil penalty or fine necessary to deter future violations; (9) past Commission decisions in similar situations; and (10) other relevant factors. 52 Pa. Code § 69.1201(c).

The ID finds that factors 1, 2, 5, 6, and 8 weighed in favor of a lower penalty, factors 7 and 9 did not apply here, and factors 3, 4, and 10 weighed in favor of imposing a higher penalty. On these points, the ID errs in applying factors 3, 4, and 10 and imposing, as a result, a civil penalty of \$1,200. Moreover, UGI Gas was following the requirements set forth in its Commission-approved Gas Choice Supplier Tariff. Pursuant to Section 3303(a) of the Public Utility Code, the Company cannot be assessed a civil penalty for adhering to those tariff requirements.

1. The ID Errs in Determining that the Third and Fourth *Rosi* Factors Weigh in Favor of a Highly Penalty

When applying the third³⁰ and fourth³¹ *Rosi* factors, the ID concludes as follows:

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.

³⁰ The third *Rosi* factor provides, “Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.” 52 Pa. Code § 69.1201(c)(3).

³¹ In full, the fourth *Rosi* factor states:

Whether the regulated entity made efforts to modify its internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

52 Pa. Code § 69.1201(c)(4).

(ID at 16.)

The Commission should reject the ID's finding about the third *Rosi* factor. As explained previously, the Company did not violate Section 1501 of the Public Utility Code or Sections 59.93 and 59.94 of the Commission's regulations. To the extent that the Company is viewed to have intentionally rejected Frontier's switching requests, UGI Gas did so in accordance with established EDI standards as required by the Company's Commission-approved Gas Choice Supplier Tariff. As explained above, Frontier failed to comply with the established EDI standards by using the incorrect "A13" code and by not providing, as required when selecting that code, explanation in the information field for the reason that code was being used. Based on the ID's logic, reasonable service required UGI Gas to have built an EDI system that purposefully did not comply or align with the Commission's EDI standards (in situations involving error codes). Certainly, this is not how Section 1501 of the Public Utility Code or Sections 59.93 and 59.94 of the Commission's regulations should apply as support for a penalty.

At all times, the record demonstrates that UGI Gas complied with the Commission's requirements and switching process. To the extent that those rules are being changed through this proceeding, which they should not, UGI Gas should not be penalized for complying with those rules. Nor should the Company be required to adopt practices that conflict with those rules and with the Company's Gas Choice Supplier Tariff, absent a Commission rulemaking or other statewide proceeding related to new EDI standards.

2. The ID Erroneously Concludes that the Tenth *Rosi* Factor Weighs in Favor of a Highly Penalty

Regarding the tenth *Rosi* factor,³² the ID reasons:

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

³² The tenth *Rosi* factor considers "[o]ther relevant factors." 52 Pa. Code § 69.1201(c)(10).

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.

ID at 17.

The ID's conclusion conflicts with the record evidence and with other findings in the ID. First, as noted previously, any alleged harm was caused by Frontier, not UGI. Frontier waited 77 days to try to correct its switching requests that were rejected on December 12, 2023, and even then, Frontier repeated its errors. Consequently, the Company should not be held accountable for following the proper EDI switching process and requiring Frontier to comply with the established EDI transaction requirements.

Second, as noted in the ID, Frontier asserted that "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." (ID at 3 n.1, 6 n.2.) Nothing in the record controverts Frontier's claim. Therefore, since the Complainant was made whole by Frontier after Frontier's failure to timely and correctly process the switch requests, the fact that the Complainant paid Frontier's rate during the period in question should not weigh in favor of a higher penalty.

Third, the ID's finding about the tenth *Rosi* factor contradicts other findings in the ID. In particular, the ID declares elsewhere that "the record does not support a finding that Mr. Wilson was charged unjust or unreasonable rates during the periods in dispute." (ID at 18.) The ID also concludes that "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." (ID at 18.) Nevertheless, the ID concludes that Frontier's higher rates during the period in question should weigh in favor of a higher penalty. Again, to the extent that the

Complainant was financially harmed by paying the higher rates over that time period, such harm was caused by Frontier.

3. Section 3303(a) of the Public Utility Code Prohibits the Imposition of a Civil Penalty, Because the Company Was Complying with its Commission-Approved Gas Choice Supplier Tariff

The Commission also should reverse the imposition of a civil penalty because such a penalty is prohibited by Section 3303(a) of the Public Utility Code. *See* 66 Pa. C.S. § 3303(a).

Under Section 3303(a):

No public utility, nor any officer, agent or employee thereof, shall be liable for any penalty or forfeiture, or be subject to any prosecution, on account of demanding, collecting, or receiving any rate for any service, or for enforcing any regulation, or practice when such rate, regulation, or practice is contained in a tariff properly filed with the commission, and posted or published as herein provided, and is applicable by the terms thereof at the time to such service although such rate, regulation, method or practice may be found by the commission to be unjust or unreasonable.

Id. Also, under well-established law, public utilities’ tariffs have the “force and effect of law” and are binding on both the utilities and their customers.³³ As such, UGI Gas must strictly adhere to its tariffs and cannot deviate from their requirements.³⁴

Relevant here, the Company’s Gas Choice Supplier Tariff requires that NGSs comply with the established EDI transaction protocols when making switching requests. In particular, Rule 4.6 of that tariff provides that a “Choice Supplier must comply with applicable communications standards, including approved internet based Electronic Data Interchange (EDI) procedures.”³⁵ Relatedly, Rule 9.1 states that “[t]o be served under Rate Schedules RT and NT, a Customer must be enrolled by the Choice Supplier elected by the Customer” and that “[s]uch enrollment by the

³³*PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa. C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

³⁴ *See id.*

³⁵ Tariff Rule 4.6, UGI Gas – Pa. P.U.C. No. 7S, Original Page No. 114.

Choice Supplier must be provided in an electronic file to the Company via an approved internet-based EDI transaction.”³⁶ Therefore, the Company cannot deviate from these requirements and was required to enforce and comply with them when processing Frontier’s switching requests. Nevertheless, to the extent that the Commission finds that these tariff rules are unjust or unreasonable, Section 3303(a) of the Public Utility Code bars the imposition of a civil penalty, as the Company was acting in accordance with its Gas Choice Supplier Tariff. *See* 66 Pa. C.S. § 3303(a).

Based on the foregoing, to the extent that the Commission ultimately finds a violation of the Public Utility Code or the Commission’s regulations, UGI Gas respectfully requests that the Commission grant Exception No. 2, reverse the imposition of the \$1,200 civil penalty, and modify the ID accordingly.

³⁶ Tariff Rule 9.1, Supplement No. 37 to UGI Gas – Pa. P.U.C. No. 7S, Second Revised Page No. 125.

III. CONCLUSION

WHEREFORE, the Pennsylvania Public Utility Commission should grant UGI Utilities, Inc. – Gas Division’s Exceptions and enter a Final Order consistent with these Exceptions that reverses the Initial Decision and dismisses the Formal Complaints filed by Doug Wilson with prejudice.

Respectfully submitted,



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Dated: January 8, 2025

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