Post & Schell P.C.
ATTORNEYS AT LAW

One Oxford Centre
301 Grant Street, Suite 3010
Pittsburgh, PA 15219
412-227-8887 Main
412-227-9065 Main Fax
www.postschell.com

Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1985 Direct Fax
File #: 213034

June 3, 2025

VIA ELECTRONIC FILING

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

Re: Phoenix White Dove Kelly v. UGI Utilities, Inc. - Gas Division
Docket No. F-2023-3038216

Dear Secretary Homsher:

Attached for filing are the Exceptions of UGI Utilities, Inc. – Gas Division to the Initial Decision in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DR/dmc
Attachment

cc: The Honorable Emily A. Farren (*w/attachments*)
Office of Special Assistants (*via email; w/attachment*)
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

Phoenix White Dove Kelley
6682 Terrace Way Apt B
Harrisburg, Pa 17111-7049
Phoenixwdkelley@hotmail.com

Date: June 3, 2025

Devin T. Ryan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Phoenix White Dove Kelly,	:	
	:	
v.	:	Docket No. F-2023-3038216
	:	
UGI Utilities, Inc. – Gas Division	:	

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

Michael Swerling (ID # 94748)
UGI Corporation
500 North Gulph Road
King of Prussia, PA 19406
Phone: 610-992-3763
Fax: 610-992-3763
E-mail: SwerlingM@ugicorp.com

Devin T. Ryan (ID # 316602)
Alice A. Wade (ID # 335228)
Post & Schell
One Oxford Centre
301 Grant Street, Suite 3010
Pittsburgh, PA 15219
Phone: 717-612-6052
E-mail: dyran@postschell.com
E-mail: alice.wade@postschell.com

Megan E. Rulli (ID # 331981)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
Phone: 717-731-1970
E-mail: mrulli@postschell.com

Dated: June 3, 2025

Counsel for UGI Utilities, Inc. – Gas Division

TABLE OF CONTENTS

Page

30706565v1

TABLE OF AUTHORITIES

Page(s)

Pennsylvania Court Decisions

Pennsylvania Administrative Agency Decisions

Pennsylvania Statutes & Regulations

I. INTRODUCTION AND BACKGROUND

This case concerns a Formal Complaint filed by Phoenix White Dove Kelly ("Complainant") against UGI Utilities, Inc. – Gas Division ("UGI Gas" or the "Company") about the Company's billing for previously unbilled amounts due to a meter mix-up. The Complainant argued that she should not be responsible for paying the amounts owed to UGI Gas. (ID at 11; Tr. 8-9.) UGI Gas maintained that the Complainant was responsible for the gas usage recorded through the correct meter. (Tr. 13-20, 23; ID at 11-12.) The Company also offered twice to amortize the amount owed over 28 months, i.e., the period during which the meter mix-up could have existed. (*See* UGI Exhibits R-5 and R-6.) The Complainant did not accept those offers to amortize the balance owed to UGI Gas. Furthermore, UGI Gas agreed to waive $1,223, or approximately 50% of the amount owed, on the condition the Complainant paid the Company the remaining $1,223.18. (Tr. 47.) Although the Complainant agreed to that proposal, the Complainant only paid $500. (Tr. 47.) UGI Gas, however, credited the $1,223 to the Complainant's account. (Tr. 48.) Thus, the remaining balance owed to UGI Gas is $722.18. (Tr. 48.)

On May 14, 2025, the Pennsylvania Public Utility Commission ("Commission") issued Administrative Law Judge Emily A. Farren's ("ALJ") Initial Decision ("ID"), sustaining the Complaint and imposing a civil penalty of $1,500 against UGI Gas. (ID at 7-24.) The ID finds that the Company committed "two specific violations": (1) UGI Gas allegedly "failed to issue a written statement with a clear, non-confusing explanation as to how the alleged under-charges were calculated in accordance with Section 56.15 of the Commission's regulations"; and (2) the Company purportedly "failed to issue a written statement to Complainant explaining Complainant's repayment options, in accordance with Section 56.14 of the Commission's

regulations and UGI's Tariff."[1] (ID at 16.) In addition to the civil penalty, the ID directs UGI Gas to perform the following within 30 days of the Commission's Final Order: (1) "re-calculate the under-charges for Complainant from May 15, 2020, through the date Complainant stopped receiving gas service at Service Address"; (2) "re-issue a new billing statement in conformity with the Commission's regulations"; (3) "provide a detailed explanation to Complainant of how Respondent arrived at the amount due"; and (4) "explain to Complainant in writing the two repayment period options available to Complaint." (ID at 23.)

The Commission should reverse the ID and dismiss the Formal Complaint in its entirety and with prejudice. Foremost, the Complainant failed to establish a *prima facie* case of any violations of the Public Utility Code, the Commission's regulations, or the Company's Commission-approved Tariff. The Complainant offered very little testimony in support of her case and no exhibits. (Tr. 8-9, 43-46.) Also, in that testimony, the Complainant never raised issues concerning the Company's compliance with Sections 56.14 and 56.15 of the Commission's regulations, or even that the Company's letters and billing statements were confusing. (*See* Tr. 8-9, 43-46.) She simply argued that she should not have to pay the amount owed because the meter mix-up was not her fault. (Tr. 8-9, 43-46.) As such, the Complainant failed to establish any *prima facie* case of regulatory violations, and the Complaint should be dismissed on that basis alone.

Even assuming *arguendo* that the Complainant did establish *a prima facie* case, the ID should be reversed because it: (1) relies on erroneous factual findings that are unsupported by the evidentiary record; and (2) misapplies the relevant law. First, the ID errs in finding that the Company's "billing correspondence dated September 26, 2022, October 7, 2022, and January 9, 2023, are confusing, as they fail to explain Complainant's options on the repayment period, and

[1] The ID also states in Conclusion of Law No. 8 that UGI Gas's September 26, 2022 letter "does not readily comport with Section 1509 of the Public Utility Code." (ID at 22.)

contain monetary sums that are inconsistent with one another and Respondent's own witness testimony . . . ." (ID at 14-15.) The ID overlooks the reason why the September 26, 2022 and October 7, 2022 letters showed a balance owed of $2,289.06 and the January 9, 2023 letter presented a balance owed of $2,444.37—the January 9, 2023 letter includes charges that accrued after October 7, 2022 (after the meter mix up was resolved). (*See* UGI Exhibits R-1, R-5, R-6, and R-7.) Specifically, as shown on UGI Exhibit R-1, there were charges of $101.11 billed on October 11, 2022, and $54.20 on October 19, 2022.[2] (UGI Exhibit R-1 at 1.) Adding those two charges to the $2,289.06 equals $2,444.37 (i.e., $101.11 + $54.20 + $2,289.06 = $2,444.37). (UGI Exhibits R-1, R-5, R-6, and R-7.) Thus, the ID erroneously concludes that based on those "two different totals due" it was "impossible to determine whether Respondent accurately recalculated and charged Complainant appropriately for the alleged previously unbilled gas service." (ID at 16.)

Second, the ID reaches the wrong conclusion regarding UGI Gas's compliance with Section 56.14 of the Commission's regulations and Rule 3(b) of the Company's Commission-approved Tariff. (ID at 5-6, 14-16, 21, 23.) Those provisions only apply when "the make-up bill exceeds the otherwise normal estimated bill for the billing period during which the make-up bill is issued by at least 50% or at least $50, whichever is greater." 52 Pa. Code § 56.14; (UGI Exhibit R-8). Nothing in the record establishes that the make-up bill exceeds the "otherwise normal estimated bill for the billing period during which the make-up bill is issued by at least 50% or at least $50." 52 Pa. Code § 56.14; (UGI Exhibit R-8). Also, the make-up bills were for previously unbilled gas usage due to a meter mix-up, not to true-up estimated bills. (ID at 12-13; UGI Exhibits R-1 and R-5.) The make-up bills were based on actual meter readings. Accordingly, there is no record evidence about what the "normal estimated bill" was for the billing periods at issue.

[2] The bill for $54.20 issued on October 19, 2022, and due to be paid by November 9, 2022, was issued because the Complainant closed out the account on that date. (*See* UGI Exhibit R-1; Tr. 13.)

Notwithstanding, UGI Gas explained the bills to the Complainant, informed her that the bills were being corrected due to the meter mix-up, and made reasonable attempts to amortize the bills over a 28-month period since the corrected bills covered a 28-month period, as evidenced by the Company's letters dated September 26, 2022, and October 7, 2022. (UGI Exhibits R-5 and R-6.) To the extent that the Company should have provided the option of amortizing the amount due "[n]ecessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%,"[3] then the Commission should follow its precedent in *Reever v. PPL Electric Utilities Corporation*[4] and simply direct the Company to "calculate that and to use the higher number of months" without imposing a civil penalty.[5]

Third, the ID's findings regarding the Company's compliance with Section 56.15 of the Commission's regulations and Section 1509 of the Public Utility Code should be reversed. (ID at 16, 18, 22-23.) Section 56.15 applies to the "bill rendered by a public utility for metered residential public utility service" and sets forth various items of information that such bills must present. 52 Pa. Code § 56.15. The ID, however, applies 52 Pa. Code § 56.15 to the Company's letters dated September 26, 2022, October 7, 2022, and January 9, 2023, and 66 Pa. C.S. § 1509 to the Company's letter dated September 26, 2022.[6] (ID at 22.) The September 26, 2022 letter was simply the cover letter accompanying the make-up bills issued to the Complainant on that date. (*See* UGI Exhibit R-5.) Nothing in the record establishes that the Company's make-up bills accompanying that letter failed to comply with Section 56.15 of the Commission's regulations or Section 1509 of the Public Utility Code. Similarly, the October 7, 2022 letter reiterated the balance

[3] 52 Pa. Code § 56.14(2)(ii).

[4] *Reever v. PPL Elec. Utils. Corp.*, 2010 Pa. PUC LEXIS 1465, at *8-9 (Initial Decision dated Sept. 13, 2010) ("*Reever ID*"), *adopted*, Docket No. C-2010-2169033 (Order entered May 6, 2011) ("*Reever Final Order*").

[5] *Reever ID* at *8-9.

[6] The ID does not apply Section 1509 of the Public Utility Code to the letters dated October 7, 2022, and January 9, 2023.

owed at that time and, once again, offered to amortize that balance over 28 months. (*See* UGI Exhibit R-6.) As for the January 9, 2023 letter, UGI Gas's witness testified that it was merely a reminder of the total amount owed to the Company as of that date. (Tr. 54.) The Complainant had already received bills for the amounts comprising that total amount due. (UGI Exhibit R-1 at 1-2; *see* Tr. 20, 54.) Moreover, the ID's interpretation of Section 56.15 of the Commission's regulations and Section 1509 of the Public Utility Code would lead to absurd results. If the ID's interpretation were correct, every utility's letter correspondence with a residential customer mentioning the balance owed must provide all the information set forth in the referenced regulation and statute, i.e., all information appearing in the relevant monthly bills. In other words, every letter mentioning a balance owed must be transformed into another, duplicative bill. Therefore, the ID errs in its application of Section 56.15 of the Commission's regulations and Section 1509 of the Public Utility Code.

Fourth, the ID incorrectly treats the Complainant's statements at the hearing, when she was not testifying, as evidence. For example, the ID cites and relies on the Complainant's statements that appear on pages 56 and 57 of the hearing transcript. (ID at 11; Findings of Fact Nos. 4 and 5.) However, during that part of the hearing, UGI Gas's witness was on the stand, and the Complainant was supposed to be conducting cross-examination. (Tr. 56-57.) Instead of asking questions, the Complainant attempted to offer additional testimony, to which the Company objected. (Tr. 56-57.) Administrative Law Judge Buckley admonished the Complainant for her actions and stated that he would accept her statements as her "closing argument." (Tr. 58) (emphasis added). It is well-established that statements made by a questioner during cross-examination and by a party during a closing argument are not evidence.[7] The Complainant also

[7] *See, e.g.*, *Commonwealth v. Fant*, 146 A.3d 1254, 1264 (Pa. 2016) (explaining that "[a] statement by counsel during a suppression hearing is not evidence of record and the Superior Court may not consider such a statement when

was not testifying on the stand, nor was she made available for cross-examination on those statements. Nonetheless, the ID treats those statements as evidence and relies on them to make findings of fact.

Fifth, the ID commits multiple errors in finding that a civil penalty of $1,500 should be imposed. The ID misquotes and misapplies the factors set forth in 52 Pa. Code § 69.1201(c) and incorrectly relies on the Commission's ruling in *Jergons v. Duquesne Light Company*[8] as alleged support, despite clear distinctions between that case and the one at bar. (ID at 13, 19.) Furthermore, the ID never mentions how the Company waived $1,223, or approximately 50% of the amount owed by the Complainant, even though: (1) such waiver was contingent on the Complainant paying the remaining balance of $1,223.18; and (2) the Complainant ultimately paid $500 instead of the full remaining balance. (Tr. 47-48.) In sum, the record shows that UGI Gas has tried to work with the Complainant and acted reasonably throughout this process, even when the Complainant failed to hold up her end of the bargain. Consequently, even assuming for the sake of argument that the ID correctly found regulatory violations, no civil penalty is warranted.

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 Complaint with prejudice.

---

analyzing whether the record supports the suppression court's findings of fact") (citations omitted); *Commonwealth v. Brown*, 925 A.2d 147, 158 (Pa. 2007) (declaring that "the arguments of counsel are simply not evidence") (quoting *United States v. Sandini*, 888 F.2d 300 (3d Cir. 1989)); *Commonwealth v. Baker*, 614 A.2d 663, 672 (Pa. 1992) (stating that "closing remarks are not evidence in the case"); *Commonwealth v. Colson*, 490 A.2d 811, 824 (Pa. 1985) (observing that "closing remarks must be limited to facts in evidence and legitimate inferences therefrom").

[8] *Jergons v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1985 (Initial Decision dated Apr. 29, 2011) ("*Jurgons ID*"), *adopted*, 2011 Pa. PUC LEXIS 1642 (Order entered June 30, 2011) ("*Jurgons Final Order*").

II. EXCEPTIONS

A. EXCEPTION NO. 1: THE COMMISSION SHOULD REVERSE THE ID BECAUSE THE COMPLAINANT FAILED TO ESTABLISH A *PRIMA FACIE* CASE OF ANY REGULATORY VIOLATIONS (ID AT 1, 5-6, 13-24; FINDINGS OF FACT NOS. 12-13, 15-16, 18-19; CONCLUSIONS OF LAW NOS. 6, 8-11).

The ID should be reversed because the Complainant failed to establish a *prima facie* case of any regulatory violations. Under Section 332(a) of the Public Utility Code, "the proponent of a rule or order has the burden of proof." 66 Pa. C.S. § 332(a). It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."[9] The preponderance of evidence standard requires proof by a greater weight of the evidence.[10] This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.[11] However, to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[12] Mere bald assertions, personal opinions, or perceptions, when unsubstantiated by facts, do not constitute evidence.[13]

Here, the Complainant failed to establish a *prima facie* case. The Complainant offered very little testimony in support of her case and no exhibits. (Tr. 8-9, 43-46.) At the first hearing, the Complainant entirely focused on the meter mix-up and stated that, in her opinion, she should not have to pay for the gas she actually used due to that mix-up. (Tr. 8-9.) Specifically, the Complainant's testimony at the first hearing was as follows:

---

[9] *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

[10] *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999).

[11] *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

[12] *Lyft, Inc. v. Pa. PUC*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (citing *Norfolk and Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980)).

[13] *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

> THE WITNESS: My case is a matter of meters being switched. First, the electric meters, and then three weeks later, like the gas meters. I've been through this with an electric company in New York before that I fought. So when it comes to the switching of meters, that is not my problem. That's not – every single bill that UGI has given me since I've been back in Pennsylvania in the last three years, I have paid what they charged me. I have paid on time, and I've paid in full. I pay my bill.
>
> And I don't think that it's fair for something that is their problem as far as I'm concerned, them trying to put, you know, bring it down on me for a program that was theirs. I don't think the little person should always pay for when the corporate America makes mistakes. I think that – that sometimes you should accept your mistaken and let it go. Thank you, Judge.
>
> JUDGE: Well, and – and specifically, what mistake did they make?
>
> THE WITNESS: The mistake was the meters. The meters were switched, and – and both sets of meters were switched. Now, me and – and PPL, you know, we – we made peace. They accepted their mistake. UGI wants to go this route, but that's their prerogative. I'm just not accepting what they want to say about it. It was not my mistake. And when you make mistakes, you have to pay for it. Sometimes to you have to let it go and move on.

(Tr. 8-9.) At the third hearing, the Complainant then explained how she paid $500 to UGI Gas after the parties had reached a settlement to resolve the Complaint, instead of the full, agreed-upon amount of $1,223.18. (Tr. 43.) She proceeded to talk about "research" she performed into "who built the place and when it was built," which Judge Buckley said was not relevant to the case. (Tr. 44-45.) After that, the Complainant provided the following testimony:

> MS. KELLY: Judge, every bill that they sent me, starting on May 15, 2020, I paid in full and on time. Now, they sent me a letter in their last references that on September 22nd, 2022, that I contacted the office stating that there's not gas service to the unit. Actually, it's the other way around. I didn't call them that day until the guy came to my apartment and said, your gas is turned off. He went and checked the stove. And I said, why, I already paid the bill? And he said, well, let me go down here and check.
>
> About two weeks before this September 22nd date, 2022, the electric people came to my house and saw that theirs was switched. So in a

> relatively close amount of time, all of this came to be. And I don't believe in that kind of coincidence. And what else I have to say about this is that all along, these things – I mean, why put it on me? When was the last time the meter was changed?

(Tr. 45-46.)

As seen above, nothing in this testimony raised issues concerning the Company's compliance with Sections 56.14 and 56.15 of the Commission's regulations, or even that the Company's letters and billing statements were confusing. (*See* Tr. 8-9, 43-46.) The Complainant simply argued that: (1) she should be excused from paying the amount owed because the meter mix-up was not her fault and she paid her prior bills on time; and (2) there were issues with her electric meter being switched in New York and Pennsylvania as well. (Tr. 8-9, 43-46.) However, it is well-established that public utilities are required to issue make-up bills for unbilled amounts when the balances accrued within the past four years.[14] Accordingly, the Complainant failed to establish any *prima facie* case of regulatory violations. Thus, the Complaint should be dismissed on that basis alone.

For these reasons, the Commission should grant Exception No. 1, reverse the ID, and dismiss the Complaint. However, even if the Complainant established *a prima facie* case, which she did not, the ID should be reversed because it relies on erroneous factual findings that are unsupported by the evidentiary record and misapplies the relevant law, as explained in the following sections.

[14] *See* 52 Pa. Code § 56.14 (authorizing public utilities to enter make-up bills for previously unbilled public utility service which accrued within the past 4 years); 66 Pa. C.S. § 1312(a) (setting forth the four-year statute of limitations for billing refunds); *Angie's Bar v. Duquesne Light Co.*, 1990 Pa. PUC LEXIS 4, at *12 (Order entered Mar. 27, 1990) (declaring that "[p]arity and equity warrant that a utility should likewise be limited to a four-year past period for recoupment of underbillings").

B. <u>EXCEPTION NO. 2</u>: THE ID ERRONEOUSLY FINDS THAT THE COMPANY'S BILLING CORRESPONDENCE WAS "CONFUSING" AND MADE IT "IMPOSSIBLE TO DETERMINE WHETHER RESPONDENT ACCURATELY RECALCULATED AND CHARGED" THE COMPLAINANT (ID AT 1, 5-6, 14-16, 18-24; FINDINGS OF FACT NOS. 12-13, 15-16, 18-19; CONCLUSIONS OF LAW NOS. 6, 8-11)

The ID errs in finding that the Company's "billing correspondence dated September 26, 2022, October 7, 2022, and January 9, 2023, are confusing, as they fail to explain Complainant's options on the repayment period, and contain monetary sums that are inconsistent with one another and Respondent's own witness testimony . . . ." (ID at 14-15.) In actuality, the correspondence is consistent and properly reflects and explains the amounts owed by the Complainant at the time the correspondence was sent.[15] (*See* UGI Exhibits R-5 and R-6.)

The ID overlooks the reason why the September 26, 2022 and October 7, 2022 letters showed a balance owed of $2,289.06 and the January 9, 2023 letter presented a balance owed of $2,444.37—the January 9, 2023 letter includes charges that accrued <u>after</u> October 7, 2022. (*See* UGI Exhibits R-1, R-5, R-6, and R-7.) As shown in the first two rows in the Complainant's account statement, there were charges of $101.11 billed on October 11, 2022, and $54.20 on October 19, 2022. (UGI Exhibit R-1 at 1.) Adding those two charges to the $2,289.06 equals $2,444.37 (i.e., $101.11 + $54.20 + $2,289.06 = $2,444.37). (UGI Exhibits R-1, R-5, R-6, and R-7.)

In addition, the testimony of UGI Gas's witness did not conflict with this fact. UGI Gas witness Wynn merely explained the contents and purpose of the September 26, 2022, October 7, 2022, and January 9, 2023 letters and did not state anything contrary to what those letters said.

[15] The October 7, 2022 letter also explained that the account statement "includes dates and types of meter readings, usage (CCF), and net bill amounts as well as heating days" and that "[d]egree days are a measure of cold weather intensity." (UGI Exhibit R-6.)

(Tr. 19-21, 53-54.) As an example, Ms. Wynn noted that the January 9, 2023 letter was "sent to Ms. Kelly" to "just remind[] her that she had a past due balance owed of $2,444.37." (Tr. 54.)

Lastly, nothing in the record supports a finding that the correspondence is "confusing." As observed previously, the difference in the dollar amounts set forth in the letters simply reflects the amounts owed at the time the letters were sent. Moreover, the Complainant's account statement provides clear support for those amounts. (*See* UGI Exhibit R-1.) Also, at no point in the Complainant's testimony did she contend that the correspondence was confusing. The only time that the Complainant raised anything remotely close to that claim was when she was objecting to the admission of the Company's exhibits, making non-specific allegations such as "[i]t does not make sense" and "[t]here's a bunch of numbers." (Tr. 59.) To the extent that the ID relied upon those statements in concluding that the Company's correspondence was "confusing," that was in error. Those statements were bald assertions that do not constitute evidence.[16] Further, Judge Buckley overruled the Complainant's objections to those exhibits and admitted them into the record. (Tr. 59-60.) Thus, the ID erroneously concludes that the Company's correspondence was "confusing" and that based on those "two different totals due" it was "impossible to determine whether Respondent accurately recalculated and charged Complainant appropriately for the alleged previously unbilled gas service." (ID at 16.)

Based on the foregoing, the Commission should grant Exception No. 2, reverse the ID, and dismiss the Complaint.

[16] *See* note 10, *supra*.

C. EXCEPTION NO. 3: THE ID INCORRECTLY CONCLUDES THAT UGI GAS FAILED TO COMPLY WITH 52 PA. CODE § 56.14 AND THE COMPANY'S TARIFF WHEN RENDERING THE MAKE-UP BILLS TO THE COMPLAINANT (ID AT 1, 5-6, 14-16, 18-24; FINDINGS OF FACT NOS. 12-13, 15-16, 18-19; CONCLUSIONS OF LAW NOS. 6, 11)

The ID's findings regarding UGI Gas's compliance with Section 56.14 of the Commission's regulations and Rule 3(b) of the Company's Commission-approved Tariff should be reversed. (ID at 1, 5-6, 14-16, 18-24.) Section 56.14 of the Commission's regulations provides:

> When a public utility renders a make-up bill for previously unbilled public utility service which accrued within the past 4 years resulting from public utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill for the billing period during which the make-up bill is issued by at least 50% or at least $50, whichever is greater:
>
> (1) The public utility shall explain the bill to the customer and make a reasonable attempt to amortize the bill.
>
> (2) The period of the amortization may, at the option of the customer, extend at least as long as:
>
> (i) The period during which the excess amount accrued.
>
> (ii) Necessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%.

52 Pa. Code § 56.14 (emphasis added). Rule 3(b) of UGI Gas's Commission-approved Tariff incorporates this regulation. (*See* UGI Exhibit R-8.) As seen above, Section 56.14's provisions only apply when "the make-up bill exceeds the otherwise normal estimated bill for the billing period during which the make-up bill is issued by at least 50% or at least $50, whichever is greater." 52 Pa. Code § 56.14; (UGI Exhibit R-8).

Here, nothing in the record establishes that the make-up bill rendered by UGI Gas exceeded the "otherwise normal estimated bill for the billing period during which the make-up bill

is issued by at least 50% or at least $50." 52 Pa. Code § 56.14; (UGI Exhibit R-8). Furthermore, the make-up bills were for previously unbilled actual gas usage due to a meter mix-up, not to true-up any estimated bills. (ID at 12-13; UGI Exhibits R-1 and R-5.) As a result, there is nothing in the record about what the "normal estimated bill" was for the billing periods at issue.

Regardless, UGI Gas recognized the impact that the make-up bill could have on the Complainant and took reasonable steps to work with her on paying the balance owed. The Company explained the bills to the Complainant, informed her that the bills were being corrected due to the meter mix-up, made reasonable attempts to amortize the bills over a 28-month period since the corrected bills covered a 28-month period (as evidenced by the Company's letters dated September 26, 2022, and October 7, 2022), and even waived $1,223, or approximately 50% of the balance owed. (UGI Exhibits R-5 and R-6.; Tr. 47-48.)

Nevertheless, to the extent that the Company should have provided the option of amortizing the amount due "[n]ecessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%,"[17] then the Commission should follow its precedent in *Reever v. PPL Electric Utilities Corporation*.[18] In that case, the utility issued a make-up bill due to a meter mix-up, like the present case, and offered to amortize the balance owed "for at least 29 months, the length of the time that Complainant lived at the subject address." *Reever ID*, 2010 Pa. PUC LEXIS 1465, at *8. However, "[t]here was no testimony to indicate whether 29 months is less than the number of months which would have been reached if subsection (2)(ii) had been calculated." *Id.* As such, the utility was "directed to calculate that and to use the higher number of months." *Id.* No civil penalty was imposed on the utility. *Id.* at *8-12. Therefore, consistent with its decision in *Reever,* the Commission should, at

[17] 52 Pa. Code § 56.14(2)(ii).
[18] *See* note 2, *supra*.

most, direct UGI Gas to calculate that amount and use the greater number of months to amortize the remaining balance owed to the Company, without imposing a civil penalty.

For these reasons, the Commission should grant Exception No. 3, reverse the ID, and dismiss the Complaint.

D. EXCEPTION NO. 4: THE COMMISSION SHOULD REVERSE THE ID'S FINDINGS ABOUT THE COMPANY'S COMPLIANCE WITH THE BILLING REQUIREMENTS SET FORTH IN 52 PA. CODE § 56.15 AND 66 PA. C.S. § 1509 (ID AT 1, 5-6, 14-16, 18-24; FINDINGS OF FACT NOS. 12-13, 15-16, 18-19; CONCLUSIONS OF LAW NOS. 6, 8-11)

The ID's findings regarding the Company's compliance with Section 56.15 of the Commission's regulations and Section 1509 of the Public Utility Code should be reversed. (ID at 1, 5-6, 14-16, 18-24.) Section 56.15 of the Commission's regulations applies to the "bill rendered by a public utility for metered residential public utility service" and sets forth various items of information that such bills must present.[19] 52 Pa. Code § 56.15 (emphasis added). Likewise,

[19] In particular, Section 56.15 requires the bill for metered residential public utility service to provide:

> (1) The beginning and ending dates of the billing period.
> (2) If applicable, the beginning and ending meter readings for the billing period. If a bill is estimated, it shall contain a clear and conspicuous marking of the word ''Estimated.''
> (3) The due date on or before which payment shall be made or the account will be delinquent.
> (4) The amount due for service rendered during the current billing period, specifying the charge for basic service, the energy or fuel adjustment charge, State tax adjustment surcharge if other than zero, State sales tax if applicable and other similar charges. The bills should also indicate that a State gross receipts tax is being charged and a reasonable estimate of the charge. A Class A utility shall include a statement of the dollar amount of total State taxes included in the current billing period charge. For the purpose of this paragraph, a Class A utility shall also include a Class A telephone utility as defined under § 63.31 (relating to classification of public utilities).
> (5) Amounts due for reconnection charges.
> (6) Amounts due for security deposits.
> (7) The total amount of payments and other credits made to the account during the current billing period.
> (8) The amount of late payment charges, designated as such, which have accrued to the account of the customer for failure to pay bills by the due date of the bill and which are authorized under § 56.22 (relating to accrual of late payment charges).
> (9) The total amount due.
> (10) A clear and conspicuous marking of estimates.

Section 1509 of the Public Utility Code provides "[b]illing procedures" for "[a]ll bills rendered by a public utility." 66 Pa. C.S. § 1509.

The ID errs by applying 52 Pa. Code § 56.15 to the Company's letters dated September 26, 2022, October 7, 2022, and January 9, 2023, and 66 Pa. C.S. § 1509 to the Company's letter dated September 26, 2022.[20] (ID at 22.) Specifically, the September 26, 2022 correspondence was the cover letter accompanying the make-up bills issued to the Complainant on that date. (*See* UGI Exhibit R-5.) In fact, UGI Gas witness Wynn testified that this letter was "accompanied" by "a series of bills that were mailed to Ms. Kelly, which represented the period of time from May 15th of 2020 through September 12th of 2022, which notified Ms. Kelly that the service technician verified the correct meter number for her unit" and "that we have since corrected the billing on her account." (Tr. 19.) The letter goes on to offer a period of 28 months "to make payment on that rebilling." (Tr. 19.) The actual bills accompanying that letter, however, are not in the record. Therefore, nothing in the record establishes that the Company's make-up bills accompanying that letter failed to comply with Section 56.15 of the Commission's regulations or Section 1509 of the Public Utility Code.

> (11) A statement directing the customer to ''register any question or complaint about the bill prior to the due date,'' with the address and telephone number where the customer may initiate the inquiry or complaint with the public utility.
>
> (12) A statement that a rate schedule, an explanation of how to verify the accuracy of a bill and an explanation, in plain language of the various charges, if applicable, is available for inspection in the local business office of the public utility and on the public utility's web site.
>
> (13) A designation of the applicable rate schedule as denoted in the officially filed tariff of the public utility.
>
> (14) Electric distribution utilities and natural gas distribution utilities shall incorporate the requirements in § § 54.4 and 62.74 (relating to bill format for residential and small business customers).

52 Pa. Code § 56.15.

[20] The ID does not apply Section 1509 of the Public Utility Code to the Company's letters dated October 7, 2022, and January 9, 2023.

Neither was the Company's letter dated October 7, 2022, a bill that needed to comply with Section 56.15 of the Commission's regulations. (*See* UGI Exhibit R-6.) The record demonstrates that this was a letter "indicat[ing] that UGI completed a trace [sic] fuel line investigation[,] and the report and results of that investigation." (Tr. 53.) Although the letter reiterated the balance owed at that time of $2,289.06 and offered to amortize the balance, once again, over 28 months, that does not mean this letter is a "bill" subject to the requirements of Section 56.15.

Likewise, the January 9, 2023 letter, UGI Gas's witness testified that it was a reminder of the total amount owed to the Company as of that date. (Tr. 20, 54.) As evidenced by the account statement, the Complainant already received bills for the amounts comprising that total amount due set forth in the January 9, 2023 letter. (UGI Exhibit R-1 at 1-2; *see* Tr. 20, 54.) Again, nothing in the record establishes that those bills issued to the Complainant which formed the basis for the $2,444.37 owed to UGI Gas failed to comply with Section 56.15.

Lastly, the ID's interpretation of Section 56.15 of the Commission's regulations and Section 1509 of the Public Utility Code would lead to absurd results. If the ID's interpretation were correct, every utility's correspondence with a residential customer mentioning the balance owed would have to provide all of the information set forth in that regulation and statute, i.e., all information contained in monthly billing statements. Effectively, every letter mentioning a balance owed would have to be transformed into another, duplicative bill. It should be noted that the September 2022 letter stated that the relevant monthly bills were enclosed.

Based on the foregoing, the Commission should grant Exception No. 4, reverse the ID, and dismiss the Complaint.

E. EXCEPTION NO. 5: THE ID ERRONEOUSLY TREATS THE COMPLAINANT'S STATEMENTS AT THE HEARING, WHEN SHE WAS NOT TESTIFYING, AS EVIDENCE, DESPITE THE PRESIDING OFFICER ADMONISHING THE COMPLAINANT FOR MAKING THOSE STATEMENTS AND DECLARING THAT THOSE STATEMENTS WOULD BE TREATED AS THE COMPLAINANT'S "CLOSING ARGUMENT" (ID AT 4, 11, 19; FINDINGS OF FACT NOS. 4-5; CONCLUSIONS OF LAW NOS. 6, 11)

The ID errs by treating the Complainant's statements at the hearing, when she was not testifying, as evidence. For example, the ID cites and relies on the Complainant's statements that appear on pages 56 and 57 of the hearing transcript. (ID at 4, 11, 19; Findings of Fact Nos. 4 and 5.) Specifically, Findings of Fact Nos. 4 and 5 are the following:

> 4. Ms. Kelley lived at the Service Address alone; used the gas dryer approximately every 10 days; and often used the electric microwave to cook or reheat her meals. Tr. 57.
>
> 5. Between May 15, 2020, and September 2022, two different sets of tenants occupied 6659B, the other apartment in Ms. Kelley's residential unit. Tr. 56.

(ID at 4.)

During that part of the hearing, however, UGI Gas witness Wynn was on the stand, and the Complainant was supposed to be conducting cross-examination. (Tr. 56-57.) Rather than asking questions, the Complainant attempted to offer additional testimony, to which the Company's objected. (Tr. 56-57.) Administrative Law Judge Buckley then admonished the Complainant for her actions and then stated that he would accept her statements as her "closing argument." (Tr. 58) (emphasis added). Recited in full, the exchange was as follows:

> JUDGE: Thank you, counsel. Ms. Kelly, do you have any questions for Ms. Wynn based on the testimony which she just provided?
>
> MS. KELLY: Yes.
>
> JUDGE: Go ahead.

MS. KELLY: I don't know how long these meters had been switched, but a 90 year old lady lived above me for a good portion of the time that year, and then a whole family moved in after she left. What - what in your paper, show what their portions might have been. I mean, you had this all worked out here. I see it. But the meters were switched, and there were people living above me in B, 6659 B. The old lady was up there by herself. And the reason that I am upset about this is because these two families lived above me, and no one's telling me what they used. It's an estimate on paperwork.

And second of all, I know how I use energy. I've been doing that for years, how I use energy. I rarely cook anything on my gas stove. I nuke 95 percent of the food I eat. I nuke it in the microwave. And that's the electric company. I wash clothes, since I'm down here by myself, every ten days or so, it takes enough clothes to fill up the washer, enough to wash clothes.

ATTORNEY CRAYNE: Your Honor.

MS. KELLY: Why cut me off?

JUDGE: Because he has an objection. No, he has an objection.

MS. KELLY: Okay.

ATTORNEY CRAYNE: I'm not sure Ms. Wynn can answer those questions and statements by Ms. Kelly. I think we need a precise question.

JUDGE: Well, let me just say that, first of all, UGI cannot provide the kind of information that you're seeking, Ms. Kelly, because they are prohibited from revealing the usage of other customers to anyone but that customer.

Now, if an attorney in this proceeding, and I understand you're proceeding in your own right, pro se, that is, you don't have an attorney. If they engaged in what's called discovery to attempt to find that out, some information may or may not have come in. But we're not even at that point yet. You're asking questions that have no relationship to Ms. Wynn's current testimony, and that's not acceptable. You have stated your argument a number of times, and I accept that as your closing argument.

(Tr. 56-58) (emphasis added).

It is well-established that statements made by a questioner during cross-examination and by a party during a closing argument are not evidence.[21] The Complainant also was not testifying on the stand, nor was she made available for cross-examination on those statements. Yet, the ID treats those statements as evidence and relies on them to make findings of fact. Such errors should be corrected by the Commission.

For these reasons, the Commission should grant Exception No. 5, reverse the ID, and dismiss the Complaint.

F. EXCEPTION NO. 6: THE COMMISSION SHOULD REVERSE THE ID'S IMPOSITION OF A CIVIL PENALTY BECAUSE THE ID MISAPPLIES THE APPLICABLE LAW AND OVERLOOKS KEY FACTUAL EVIDENCE (ID AT 1, 5-6, 16-24; FINDINGS OF FACT NOS. 12-13, 15-16, 18-19; CONCLUSIONS OF LAW NOS. 6, 8-11)

As explained previously, the ID incorrectly concludes that the Company committed various regulatory violations and should be reversed on those bases alone. Notwithstanding, to the extent that the Commission adopts any of those determinations, a civil penalty should not be imposed.

Indeed, the ID commits numerous errors in finding that a civil penalty of $1,500 should be imposed on UGI Gas. As an initial matter, the ID purports to quote Section 69.1201(c) of the Commission's regulations when reciting the factors that the Commission utilizes to determine whether and in what amount a civil penalty should be assessed. (*See* ID at 18 n.38.) However, the ID actually quotes and then applies the factors listed in the *Rosi* decision. (*See id.* at 17-18); *see Rosi v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered Feb. 10,

[21] *See, e.g.*, *Commonwealth v. Fant*, 146 A.3d 1254, 1264 (Pa. 2016) (explaining that "[a] statement by counsel during a suppression hearing is not evidence of record and the Superior Court may not consider such a statement when analyzing whether the record supports the suppression court's findings of fact") (citations omitted); *Commonwealth v. Brown*, 925 A.2d 147, 158 (Pa. 2007) (declaring that "the arguments of counsel are simply not evidence") (quoting *United States v. Sandini*, 888 F.2d 300 (3d Cir. 1989)); *Commonwealth v. Baker*, 614 A.2d 663, 672 (Pa. 1992) (stating that "closing remarks are not evidence in the case"); *Commonwealth v. Colson*, 490 A.2d 811, 824 (Pa. 1985) (observing that "closing remarks must be limited to facts in evidence and legitimate inferences therefrom").

2000). Although those factors formed the basis for the Commission's policy statement set forth in Section 69.1201(c), the specific factors utilized in *Rosi* are somewhat different and are more relevant to "slamming" cases. *Compare Rosi* at 10-11, *with* 52 Pa. Code § 69.1201(c).

For example, "[w]hether the conduct at issue was of a serious nature" and "[w]hether the resulting consequences of the conduct at issue were of a serious nature" are the first and second factors listed in Section 69.1201(c) but are not factors listed in the *Rosi* decision. *Compare Rosi* at 10-11, *with* 52 Pa. Code § 69.1201(c)(1). Also, "[w]the regulated entity promptly and voluntarily took steps to return the customer to the appropriate carrier and credited the customer's account" and "[w]hether the regulated entity initiated procedures to prevent future slamming" are the second and third factors recited in the *Rosi* decision but are not expressly contained in 52 Pa. Code § 69.1201(c). As such, the ID should have utilized the factors listed in 52 Pa. Code § 69.1201(c) instead.

When properly applying the factors in Section 69.1201(c), it becomes apparent that no civil penalty should be imposed. First, the conduct at issue was not of a "serious nature." 52 Pa. Code § 69.1201(c)(1). There was no "willful fraud or misrepresentation" here,[22] as the Company's correspondence dated September 26, 2022, October 7, 2022, and January 9, 2023, all accurately recited the amount owed by the Complainant (at the time they were sent), and the Company offered to amortize the amount owed over 28 months. (*See* UGI Exhibits R-1, R-5, R-6, and R-7.) UGI Gas even waived $1,223 of the amount owed—a fact that is conspicuously absent in the ID. (*See* Tr. 47-48.) This failure to acknowledge the $1,223 credit to the Complainant's account is especially confounding, given that the second factor applied by the ID was "[w]hether the regulated entity promptly and voluntarily took steps to return the customer to the appropriate

[22] 52 Pa. Code § 69.1201(c)(1).

carrier and credited the customer's account." (ID at 17-18) (emphasis added). The ID never mentions the Company's application of that $1,223 credit to the Complainant's account, nor the Complainant's failure to uphold her end of the bargain and pay the remaining balance of $1,223.18 in full. (Tr. 47-48.)

Second, the "resulting consequences of the conduct at issue" were not of a "serious nature." 52 Pa. Code § 69.1201(c)(2). There was no "personal injury or property damage." *Id.* The case concerns a meter mix-up and a re-billing based upon the Complainant's actual gas usage. The record demonstrates that UGI Gas accurately relayed the amount owed by the Complainant at the time each correspondence was sent. (*See* UGI Exhibits R-1, R-5, R-6, and R-7.) Also, the Company waived $1,223, or approximately 50% of the amount owed by the Complainant, in an effort to resolve her concerns. (Tr. 47-48.) Thus, the resulting consequences were not of a serious nature.

Third, the Company did not intentionally violate any provision of the Public Utility Code, the Commission's regulations, or its Commission-approved Tariff. *See* 52 Pa. Code § 69.1201(c)(3). In fact, the record shows that the Company acted in compliance with the applicable laws and regulations, as explained in the prior sections. Nevertheless, to the extent that the Commission finds that UGI Gas failed to comply with any laws or regulations, the Company did not commit any intentional violations.

Fourth, the Company acted quickly to correct the meter mix-up after it was discovered. *See* 52 Pa. Code § 69.1201(c)(4). The meter mix-up was discovered during a September 22, 2022 visit to the Complainant's service address, and the Company issued make-up bills and offered to amortize the balance owed on September 26, 2022. (*See* UGI Exhibit R-5.)

Fifth, the duration and number of customers affected by any violation were limited. *See* 52 Pa. Code § 69.1201(c)(5). Only one customer, i.e., the Complainant, was affected, and the duration of any alleged violation would be limited to the September 26, 2022, October 7, 2022, and January 6, 2023 letters.

Sixth, as the ID correctly declares, the "compliance history" of UGI Gas "weighs in favor" of the Company. (ID at 19); *see* 52 Pa. Code § 69.1201(c)(6).

Seventh, as the ID properly finds, UGI Gas "cooperated during the litigation of this proceeding." (ID at 19); *see* 52 Pa. Code § 69.1201(c)(7).

Eighth, no civil penalty is "necessary to deter future violations." 52 Pa. Code § 69.1201(c)(8). UGI Gas will comply with any final order issued in this proceeding, after any appeal rights are exhausted, for the Complainant and going forward for similarly-situated customers. In fact, if the Commission were to follow its precedent in the *Reever* case and simply direct the Company calculate the higher number of months under 52 Pa. Code § 56.14, UGI Gas would do so.[23]

Ninth, past Commission decisions in similar situations weigh in favor of no civil penalty. *See* 52 Pa. Code § 69.1201(c). As noted previously, the Commission did not impose a civil penalty in the *Reever* case, which involved a similar meter mix-up that was not the fault of the utility.[24] Like in this case, [t]here was no testimony to indicate" whether the number of months calculated pursuant to 52 Pa. Code § 56.14(2)(i) was "less than the number of months which would have been reached if subsection (2)(ii) had been calculated."[25] Therefore, the utility was directed to "calculate that and to use the higher number of months."[26] No civil penalty was imposed.

[23] *Reever ID* at *8-9.
[24] *See Reever ID* at *8-9.
[25] *Id.* at *8.
[26] *Id.*

Accordingly, to the extent that the Commission finds that the Company needs to comply with Section 56.14(2)(ii), the Commission should follow its precedent in *Reever*.

In addition, the ID errs in relying on the Commission's ruling in *Jergons v. Duquesne Light Company*[27] as alleged support for its determination. (ID at 13, 19.) The utility in *Jergons* "offered no payment agreement to Complainant other than the typical twelve month budget plan available to all ratepayers."[28] In other words, the utility did not offer to amortize the balance owed over the number of months that meter mix-up existed. Here, however, UGI Gas offered to amortize the balance owed over 28 months, which was how long there could have been the meter mix-up at the service address. (*See* UGI Exhibit R-5; ID at 5.) Also, the "numbers and calculations testified to by Respondent's witnesses" in *Jergons* were "at odds or contrary to the evidence presented through Respondent's documentation."[29] In contrast, UGI Gas's testimony was consistent with all the documentation sent to the Complainant and admitted into the record in this proceeding, as explained in the prior sections. Lastly, in *Jergons*, "the only written documentation provided to Complainant to explain how the charges were calculated, or even what charges Respondent added back into Complainant's bill, failed to state how the ultimate sum was determined."[30] In this case, UGI Gas provided the Complainant with a full set of corrected bills with its September 26, 2022 letter. (*See* UGI Exhibit R-5; Tr. 19.) Thus, there are clear distinctions between the *Jergons* case and the one at bar.

Based on the foregoing, to the extent that the Commission ultimately finds a violation of the Public Utility Code, the Commission's regulations, or the Company's Commission-approved

[27] *Jergons v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1985 (Initial Decision dated Apr. 29, 2011) ("*Jurgons ID*"), *adopted*, 2011 Pa. PUC LEXIS 1642 (Order entered June 30, 2011) ("*Jurgons Final Order*").

[28] *Jergons ID* at *22.

[29] *Jergons ID* at *23.

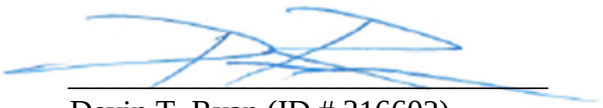
[30] *Id.*

Tariff, UGI Gas respectfully requests that the Commission grant Exception No. 6, reverse the imposition of the $1,500 civil penalty, and modify the ID accordingly.

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 Complaint filed by Phoenix White Dove Kelly with prejudice.

Respectfully submitted,



Michael Swerling (ID # 94748)
UGI Corporation
500 North Gulph Road
King of Prussia, PA 19406
Phone: 610-992-3763
Fax: 610-992-3763
E-mail: SwerlingM@ugicorp.com

Devin T. Ryan (ID # 316602)
Alice A. Wade (ID # 335228)
Post & Schell
One Oxford Centre
301 Grant Street, Suite 3010
Pittsburgh, PA 15219
Phone: 717-612-6052
E-mail: dyran@postschell.com
E-mail: alice.wade@postschell.com

Megan E. Rulli (ID # 331981)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
Phone: 717-731-1970
E-mail: mrulli@postschell.com

Dated: June 3, 2025

Counsel for UGI Utilities, Inc. – Gas Division