

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

FARMER’S PRIDE, INC.	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
UGI UTILITIES, INC. – GAS DIVISION	)	
	)	
Respondents.	)	Docket No. C-2025-3057769
_____	)	

**MOTION FOR LEAVE TO FILE REPLY TO NEW MATTER**

Complainant, Farmer’s Pride, Inc. (“Complainant”), by and through its undersigned counsel, files this Motion for Leave to File Reply to New Matter, and in support thereof, states as follows:

**I. INTRODUCTION**

1. Complainant filed its Complaint on October 1, 2025.
2. Respondent, UGI Utilities, Inc. – Gas Division (“UGI”) filed its Answer with New Matter on October 22, 2025.
3. Complainant’s Reply to New Matter was due on November 12, 2025.
4. On November 14, 2025, Complainant sought an agreement to extend the time to file the Reply until November 24, 2025, but Respondent was not agreeable.
5. Complainant now seeks leave to file its Reply to New Matter as denials of the factual averments, if any, that are set forth in Respondent’s New Matter.

**II. ARGUMENT**

**A. Principles of Equity and Pennsylvania Procedural Law Support Granting Leave for Complainant to File its Reply to New Matter as Effective Denials**

6. “Unless otherwise ordered by the Commission, replies to answers seeking affirmative relief or to new matter shall be filed with the Commission and served within 20 days after date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing.” 52 Pa. Code § 5.63(a).

7. “Failure to file a timely reply to new matter *may* be deemed in default, and relevant facts stated in the new matter *may* be deemed to be admitted.” 52 Pa. Code § 5.63(b) (emphasis added).

8. Averments that express conclusions of law do not require a responsive pleading and are deemed denied. *Foust v. Pa. Dept. of Human Servs.*, 305 A.3d 1128, 1135 (Pa. Cmwlth. 2023); *see also Commonwealth v. \$26,556.00 Seized from Polidoro*, 672 A.2d 389, 393 n.8 (Pa. Cmwlth. 1996) (“[u]nder any rule of pleading, a conclusion of law is not an admission.”).

9. Moreover, “a plaintiff has to factually deny new matter only when it asserts a defense, which if all the allegations of the complaint are true, is still a bar to the plaintiff’s recovery” and the “[n]ew matter properly contains averments of facts only if they are extrinsic to facts averred in the complaint.” *Fox v. Byrne*, 525 A.2d 428, 432 (Pa. Super. 1987).

10. Section 5.63(b) does not mandate that a failure to file a timely reply to new matter result in the facts stated in the new matter being deemed admitted, consistent with Pennsylvania law regarding the Pennsylvania Rules of Civil Procedure. *Accord Fisher v. Hill*, 81 A.2d 860, 862 (Pa. 1951) (the word “shall” in Pa. R.C.P. 1026(a) is not mandatory in the sense that it admits no exception unless an extension of time is secured by agreement of the parties or by leave of court).

11. Further, a pleading may be filed after the twenty-day period if “the opposite party is not prejudiced and justice requires.” *Id.* at 863 (interpreting Pa. R.C.P. 1026).

12. The Pennsylvania Rules of Civil Procedure direct courts to apply them liberally:

The rules shall be liberally applied to secure the just, speedy, and inexpensive determination of every action pending or proceeding to which they are applicable. The court at every stage of such action or proceeding may disregard any error or defect of procedure which does not affect the substantive rights of the parties.

Pa. R.C.P. 126; *Pisiechko v. Diaddorio*, 326 A.2d 608, 611 (Pa. Super. 1974) (“[Courts] may weigh other countervailing considerations inherent in the concept of the Rules of Civil Procedure, i.e., the rules were designed to promote the fair and efficient administration of justice.”).

13. “Procedural rules are not ends in themselves but means whereby justice, as expressed in legal principles, is administered. They are not to be exalted to the status of substantive objectives.” *McKay v. Beaty*, 35 A.2d 264, 286-87 (Pa. 1944).

14. Further, by stating merely that “relevant facts stated in the new matter *may* be deemed to be admitted,” the Pennsylvania Code leaves open the opportunity for the PUC to grant leave to accept replies to new matter as effective denials of facts set forth in new matter. 52 Pa. Code § 5.63(b) (emphasis added).

15. Here, Complainant seeks to file its Reply to New Matter shortly after the twenty (20) day deadline set forth in § 5.63(a).

16. To the extent Respondent’s new matter contains any factual assertions that are extrinsic to the complaint, Respondent will suffer no prejudice from the minor delay in filing the Reply to New Matter - no evidence has been lost, no witnesses have become unavailable, and memories have not faded in this short period of time.

17. Additionally, the principles of equity and justice weigh in favor of adjudicating this dispute on the merits rather than precluding Complainant’s development of certain factual issues on a mere technicality and minor delay.

18. Accordingly, Complainant respectfully requests that the Commission grant Complainant leave to file its Reply to New Matter as effective denials of the factual averments, if any, that are set forth in Respondent's New Matter in order to promote fair and efficient administration of justice. A true and correct copy of Complainant's Reply to Respondent's New Matter is attached as Exhibit 1.

**B. Leave to File the Reply Can be Liberally Granted Because Complainant's Reply is Non-Jurisdictional**

19. Complainant's proposed filing is non-jurisdictional (i.e. it is not related to an appeal and does not affect the court's jurisdiction), so the Commission should apply alternative standards used in instances of withdrawals of deemed admissions, consistent with established Pennsylvania law. *See Adam Construction Excavator, LLC v. Dep't of Labor and Industry, Bureau of Labor Law Compliance*, 343 A.3d 759 (Pa. Commw. 2025) (distinguishing a late request for a hearing from a late appeal, explaining the former was "more akin to a 'nonjurisdictional claim processing rule,'" whereas the latter was jurisdictional.) (citations omitted).

20. The Commonwealth Court has further stated that "the *nunc pro tunc* standard was inappropriate if an untimely **appeal** was not at issue." *Id.* (citing *Muma v. Pennsylvania Department of Health, Division of Nursing Care Facilities*, 223 A.3d 742, 751 (Pa. Commw. 2019)) (emphasis in original).

21. "Instead, when it was an untimely pleading, ... [the Commonwealth Court] held certain Rules of Civil Procedure were more appropriate standards." *Id.*

22. The Commonwealth Court went on to note that Pennsylvania Rule of Civil Procedure 4014, related to requests for admissions, is instructive.

23. Pennsylvania Rule of Civil Procedure 4014 states:

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. ... [T]he court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining the action or defense on the merits. Any admission by a party under this rule is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

Pa. R.C.P. 4041(d).

24. “Withdrawal of admissions should be granted where upholding the admission would practically eliminate any presentation of the merits of the case; where withdrawal would prevent manifest injustice; and where the party who obtained the admissions failed to prove that withdrawal would result in prejudice to that party.” *Dwight v. Girard Medical Center*, 623 A.2d 913, 916 (Pa. Commw. 1993) (footnote omitted).

25. “The test of prejudice turns on whether a party opposing the withdrawal is rendered less able to obtain the evidence required to prove the matters which had been admitted.” *Id.*

26. “Deemed admissions are not meant to subserve a decision on the merits, but rather are ‘a discovery tool intended to clarify issues, expediate the litigation process, and **promote a decision based on the merits.**’” *Adam Construction*, 343 A.3d 759 (quoting *Stimmler v. Chestnut Hill Hosp.*, 981 A.2d 145, 161 n. 18 (Pa. 2009)) (emphasis in original).

27. Here, the filing of Complainant’s Reply to New Matter is not related to a jurisdictional issue and the Commission should apply the standard set forth in Pa. R.C.P. 4014(d) pertaining to withdrawal of deemed admissions instead of the *nunc pro tunc* standard.

28. While it is unclear whether Respondent’s New Matter contains any factual averments that are extrinsic to the Complaint, granting Complainant leave to file the Reply as effective to deny the New Matter would, at most, result in the removal of deemed admissions, if

any exist. Doing so is in the interest of justice because it would permit Complainant to proceed with prosecution of its claim on the merits rather than on any facts admitted by way of technicality.

29. Respondent will not be prejudiced, as filing the Reply to New Matter will have no impact on Respondent's ability to obtain evidence relevant to the extrinsic factual allegations, if any, that are asserted in its New Matter.

### **III. REQUEST FOR RELIEF**

Complainant, Farmer's Pride, Inc. respectfully requests that the Commission accept the filing of Complainant's proposed Reply to New Matter attached hereto as Exhibit 1 and treat Complainant's Reply to New Matter as timely denials of the factual averments, if any, set forth in Respondent's New Matter.

BARLEY SNYDER

Dated: November 24, 2025

By: \_\_\_\_\_

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**CERTIFICATION OF SERVICE**

I hereby certify that on this date, a true and correct copy of the foregoing document was served via electronic mail and first class mail upon the following counsel of record addressed as follows:

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Dated: November 24, 2025

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*Farmer's Pride Inc.*

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**ORDER**

AND NOW, this \_\_\_\_ day of November 2025, upon consideration of Complainant Farmer’s Pride, Inc.’s Motion for Leave, and any response thereto, Complainant’s motion is GRANTED and Complainant may file the Reply to New Matter attached as Exhibit 1 to Complainant’s Motion for Leave within 10 days of the entry of this Order.

BY: \_\_\_\_\_

# **Exhibit 1**

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

FARMER’S PRIDE, INC.	)	
	)	
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Attorney for Complainant

**REPLY TO NEW MATTER**

Farmer’s Pride, Inc. d/b/a Bell & Evans (“Farmer’s Pride”), hereby files this Reply to the New Matter asserted by UGI Utilities, Inc. – Gas Division (“UGI Gas”), pursuant to Section 5.63 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §5.63, and replies to each of the separately numbered paragraphs asserted as “New Matter” by UGI Gas.

1. Farmer’s Pride incorporates by reference the paragraphs and allegations in its Complaint as though the same were fully set forth herein.
2. Admitted with clarification. The XD Agreement is a written document that speaks for itself and UGI Gas’s characterization of that document is denied.

3. Admitted that Farmer's Pride's Agreement specifies Daily Firm Requirements. Farmer's Pride denies the remaining assertions in the corresponding paragraph of UGI's new matter reference as stating conclusions of law and/or referring to written documents which speak for themselves.

4. Admitted in part and denied in part. Farmer's Pride admits that the selected portion of the tariff is accurately quoted but denies any conclusions of law or characterization of the written language by UGI Gas.

5. Admitted in part and denied in part. It is admitted that UGI Gas declared Critical Days on January 21 and 22, 2025, but it is denied that UGI provided Farmer's Pride with reasonable notice, or that UGI interrupted service to Farmer's Pride on those dates.

6. Denied. It is denied that Farmer's Pride received effective notice of the Critical Days declared by UGI Gas.

7. Denied. UGI Gas fails to identify the addressees and email addresses of the emails that it claims it sent and were returned undeliverable. Farmer's Pride lacks information or knowledge sufficient to form a belief as to the truth of the allegation in the corresponding paragraph and denies the same.

8. Denied. UGI Gas fails to identify what phone numbers were called or when they were called. Farmer's Pride lacks information or knowledge sufficient to form a belief as to the truth of the allegation in the corresponding paragraph and denies the same.

9. Admitted in part and denied in part. It is admitted that Mike Bracrella was a current employee of Farmer's Pride on January 21, 2025. Farmer's Pride Farmer's Pride lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in the corresponding paragraph and, therefore, denies them.

10. Denied. Farmer's Pride lacks information or knowledge sufficient to form a belief as to the truth of the matter asserted and therefore denied it.

11. Denied as a conclusion of law to which no response is required.

12. Admitted with clarification. It is admitted that the allegation accurately quoted a limited portion of the letter. The letters also state that "UGI will be implementing enhanced reporting capabilities to monitor your natural gas usage as frequently as hourly. This added functionality will enable greater visibility on customer's usage patterns, positioning UGI to act swiftly when non-compliance to interruptions is identified." Despite this purported enhanced capability, UGI did not act swiftly to notify Farmer's Pride of non-compliance since it would undermine UGI's ability to collect lucrative penalty charges.

13. Admitted in part and denied in part. It is admitted that Farmer's Pride took gas in excess of its DRF on January 21 and 22, 2025, but it is denied that UGI had provided effective notice to Farmer's Pride of the Critical Notice declaration for those days.

14. Admitted only that Company issued a penalty charge in the amount of \$391,282.75. The remainder of the corresponding new matter asserts a conclusion of law to which no response is required.

15. Denied as a conclusion of law to which no response is required. By way of further response, UGI's allegations in the corresponding paragraph of new matter refer to a written document that speaks for itself and UGI's characterization of that document is denied.

16. Denied as a conclusion of law to which no response is required. By way of further response, UGI's allegations in the corresponding paragraph of new matter refer to a written document that speaks for itself and UGI's characterization of that document is denied.

17. Admitted. Farmer's Pride's Complaint speaks for itself.

18. Denied as a conclusion of law to which no response is required.
19. Denied as a conclusion of law to which no response is required.
20. Admitted.
21. Denied as a conclusion of law to which no response is required.
22. Denied.

WHEREFORE, Farmer's Pride, Inc, respectfully requests that the Commission find that (1) UGI's penalty charges on Critical Days are unjust or unreasonable given the much lower cap on penalties that UGI can be charged by its pipeline, (2) UGI's collection and retention of the penalty rate is not in compliance with the Commission's regulations requiring UGI to take reasonable steps to notify customers of supply disruptions, and (3) Ordering that UGI refund the excessive penalty charges paid by Farmer's Pride, Inc, together with interest at the legal rate from the date of the excessive payment.

BARLEY SNYDER

By: /s/ Matthew M. Hennesy

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