

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE REPLY TO NEW MATTER

Pursuant to 52 Pa. Code § 5.103, Complainant Farmer’s Pride, Inc. (“Farmer’s Pride” or “Complainant”), by and through its counsel, hereby moves for leave to file its Reply to Respondent’s New Matter and treat Complainant’s Reply to New Matter as effective denials of the factual averments, if any, set forth in Respondent’s New Matter.

I. PROCEDURAL AND FACTUAL HISTORY

Farmer’s Pride filed its Complaint on October 1, 2025. Respondent, UGI Utilities, Inc. – Gas Division (“UGI”) filed its Answer with New Matter on October 22, 2025. Complainant’s Reply to New Matter was due on November 12, 2025. Complainant sought an extension on November 14, 2025, to file the Reply by November 24, 2025 as a courtesy, but Respondent was not agreeable.

II. ARGUMENT

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

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. "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).

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). "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). "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). 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).

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

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

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

The Commonwealth Court has pointed to Pennsylvania Rule of Civil Procedure 4014 for the standard for permitting leave to file non-jurisdictional filings. 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. “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. Cmwlth. 1993) (footnote omitted). “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.*

The filing of Complainant’s Reply to New Matter is not related to a jurisdictional issue and the Commission should apply the liberal standards set forth in Pennsylvania Rules of Civil Procedure 126 and 4014 when deciding whether to grant leave. 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. Respondent will not be prejudiced, as filing the Reply to New Matter will have no impact on Respondent’s ability to obtain the evidence relevant to the allegations asserted in New Matter. 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. CONCLUSION

Based on the foregoing reasoning and authority, Complainant respectfully requests the Commission grant its Motion for Leave to file the Reply to New Matter attached to its Motion as Exhibit 1 and treat Complainant's Reply to New Matter as timely denials of the factual averments to the extent any exist.

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Dated: November 24, 2025

By: /s/ Matthew M. Hennesy

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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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