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File #: 215014

March 27, 2026

VIA ELECTRONIC FILING

Mathew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

Re: Application of UGI Utilities, Inc. for (1) Certificate of Public Convenience Evidencing Approval Under 66 Pa.C.S. §§1102(a)(3) and 1103(a) for the Transfer of the Auburn City Gate Station, Located in Auburn Township, Susquehanna County, Pennsylvania, to UGI Auburn Gathering, LLC, an Affiliate of UGI Utilities, Inc.; (2) Approval of the Proposed Transfer of the Auburn City Gate Station Pursuant to 66 Pa.C.S. §2102(b); and (3) Approval of a Modification of an Existing Affiliated Interest Agreement Pursuant to 66 Pa.C.S. §2103.

Docket No. A-2026-3060375

Docket No. G-2026-3060435

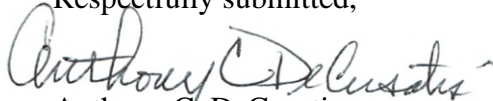
Docket No. G-2026-3060551

Dear Secretary Homsher:

Enclosed for filing is the above-captioned Preliminary Objections of UGI Utilities, Inc. (“UGI Utilities”) in the above-referenced transactions.

Copies will be provided per the attached Certificate of Service.

Respectfully submitted,



Anthony C. DeCusatis

ADC/sll
Enclosures

cc: Certificate of Service

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Date: March 27, 2026



Anthony C. DeCusatis

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

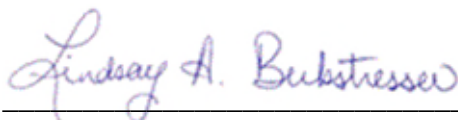
Application of UGI Utilities, Inc. for: :
(1) Certificate of Public Convenience :
Evidencing Approval Under 66 Pa.C.S. :
§§1102(a)(3) and 1103(a) for the Transfer of :
the Auburn City Gate Station, Located in :
Auburn Township, Susquehanna County, : Docket No. A-2026-3060375
Pennsylvania, to UGI Auburn Gathering, : Docket No. G-2026-3060435
LLC, an Affiliate of UGI Utilities, Inc.; : Docket No. G-2026-3060551
:
(2) Approval of the Proposed Transfer of the :
Auburn City Gate Station Pursuant to 66 :
Pa.C.S. §2102(b); and :
:
(3) Approval of a Modification of an Existing :
Affiliated Interest Agreement Pursuant to 66 :
Pa.C.S. §2103. :
:

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT PURSUANT TO 52 PA. CODE §5.101(B) YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. 3265, HARRISBURG, PA 17105-3265. COPIES SHOULD BE SERVED ON THE UNDERSIGNED, OTHER PARTIES, AND THE ADMINISTRATIVE LAW JUDGE.

Respectfully submitted,

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Attorneys for UGI Utilities Inc.

Date: March 27, 2026

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of UGI Utilities, Inc. for:	:	
	:	
(1) Certificate of Public Convenience	:	
Evidencing Approval Under 66 Pa.C.S.	:	
§§1102(a)(3) and 1103(a) for the Transfer of	:	
the Auburn City Gate Station, Located in	:	
Auburn Township, Susquehanna County,	:	
Pennsylvania, to UGI Auburn Gathering,	:	
LLC, an Affiliate of UGI Utilities, Inc.;	:	Docket No. A-2026-3060375
	:	Docket No. G-2026-3060435
(2) Approval of the Proposed Transfer of the	:	Docket No. G-2026-3060551
Auburn City Gate Station Pursuant to 66	:	
Pa.C.S. §2102(b); and	:	
	:	
(3) Approval of a Modification of an	:	
Existing Affiliated Interest Agreement	:	
Pursuant to 66 Pa.C.S. §2103.	:	

**PRELIMINARY OBJECTIONS OF UGI UTILITIES, INC. – GAS DIVISION
TO THE PETITION TO INTERVENE AND PROTEST OF
BKV OPERATING, INC.**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. SUMMARY AND OVERVIEW

1. UGI Utilities, Inc. – Gas Division (“UGI Gas” or the “Company”) files these Preliminary Objections to the Petition to Intervene and Protest (“Petition and Protest”) of BKV Operating Inc. (“BKV”) pursuant to Section 5.101 of the regulations of the Pennsylvania Public Utility Commission (“PUC” or the “Commission”)¹ on three grounds.

¹ 52 Pa. Code §5.101. Section 5.101 provides in relevant part that “Preliminary Objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections.” 52 Pa. Code §5.1(a)

2. First, the principal issue BKV is advancing as the alleged basis for intervening in, and protesting, UGI Gas’s above-captioned Application (“UGI Gas Application”) is not within the subject matter jurisdiction of the Commission.² Long-standing appellate court precedent establishes that the Commission does not have subject matter jurisdiction to adjudicate contract disputes even if one party to that dispute is a Pennsylvania public utility.³ Here, however, UGI Gas is not even a party to the contract that BKV relies upon to claim an interest in this case. Rather, as BKV concedes, the agreement is between BKV and UGI Energy Services, LLC (“UGIES”)⁴ neither of which is a Pennsylvania public utility, and the agreement pertains to gathering service that is not subject to the jurisdiction of the Commission.⁵

3. Second, BKV also contends that its intervention and protest are warranted because it intends to raise issues about discrimination it allegedly would experience if uncommitted capacity on the Auburn Gathering System⁶ became certificated as an interstate natural gas pipeline and regulated by the Federal Energy Regulatory Commission (“FERC”).⁷ However, BKV’s only specific averments of discrimination are allegations that BKV would be denied “receipt points” on

provides that “[t]he pleadings in an action before the Commission include the following: (1) Application and protest . . . (4) Petition and answer.”

² 52 Pa. Code §5.101(a)(1) (Preliminary objections may be filed to contest the Commission’s jurisdiction).

³ *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977) (The Commission does not have authority to adjudicate a “breach of contract by a public utility”); *Leveto v. National Fuel Gas Dist. Corp.*, 366 A.2d 270, 275 (Pa. Super. 1976) (The Commission does not have jurisdiction to adjudicate “a private contractual dispute between a citizen and a utility”).

⁴ Petition and Protest ¶ 4.

⁵ *See, e.g.*, Petition and Protest ¶¶20-22.

⁶ The Auburn Gathering System is described in greater detail in Paragraph Nos. 16-22 of the UGI Gas Application. The current operation of the Auburn Gathering System is explained in Paragraph Nos. 23-25 of the UGI Gas Application.

⁷ On October 10, 2025, UGI Auburn, LLC (“UGI Auburn”) and UGI Auburn Gathering, LLC (“UGI Gathering”) filed the *Joint Abbreviated Application of UGI Auburn, LLC and UGI Auburn Gathering, LLC for Certificate of Public Convenience and Necessity, Blanket Certificates and Request for Waivers* at FERC Docket No. CP26-9 (“Abbreviated FERC Application”) to obtain, *inter alia*, a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act for authorizations needed to operate capacity not committed to gathering customers or leased to UGI Gas as an interstate pipeline in Susquehanna, Wyoming, and Luzerne Counties, Pennsylvania. *See* UGI Gas Application ¶¶ 2, 10.

the FERC-certificated pipeline⁸ and that the FERC could certificate the pipeline to operate at pressures allegedly exceeding those achievable by BKV.⁹ However, the Commission also lacks subject matter jurisdiction to address those issues, which are within the exclusive jurisdiction of the FERC under Section 1(b) of the Natural Gas Act,¹⁰ as the U.S. Supreme Court has definitively held.¹¹ In fact, BKV concedes this point by seeking a “stay” of this proceeding to allow the FERC to decide issues that BKV acknowledges are properly within the FERC’s jurisdiction.¹² In summary, the Commission does not have subject matter jurisdiction to adjudicate disputes that relate to either: (1) service furnished by an unregulated gathering system; or (2) approvals sought by parties other than UGI Gas under the Abbreviated FERC Application to create an interstate pipeline subject to the FERC’s exclusive jurisdiction. Thus, even if the FERC declined to issue the certificate and other approvals requested in the Abbreviated FERC Application, the Commission would still not have subject matter jurisdiction to decide claims pertaining to UGIES’s alleged contractual obligations under the Gathering Agreement to which UGI Gas is not a party.

4. Third, BKV’s Petition and Protest are legally insufficient¹³ because they are based on the erroneous legal premise that the “core objective” of the proposed transfer of the Auburn City Gate Station to UGI Gathering is “enabling interstate transportation on [the Auburn Gathering System].”¹⁴ The transfer of the Auburn City Gate Station to UGI Gathering is not a legal requirement for UGI Gathering to lease uncommitted capacity on the Auburn Gathering System

⁸ BKV’s gas enters the Auburn Gathering System through intervening gathering companies, as UGI Gas explained in Paragraph No. 24 of its Application.

⁹ See Petition and Protest ¶¶ 37, 39, 49.

¹⁰ 15 U.S.C. §717(b).

¹¹ *Schneiderwind v. ANR Pipeline Co.*, 485 U.S. 293, 300-301 (1988) (“The NGA confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale.”)

¹² See Petition and Protest ¶¶ 55-57.

¹³ 52 Pa. Code §5.101(a)(4).

¹⁴ Petition and Protest ¶ 56.

to UGI Auburn, LLC (“UGI Auburn”) or for FERC to certificate such uncommitted capacity as a FERC-regulated interstate pipeline. Additionally, as explained in the UGI Gas Application,¹⁵ it is not necessary for UGI Gas to retain ownership of the Auburn City Gate Station to furnish safe, reliable, and reasonable service to its customers, and the transfer will provide an affirmative benefit to UGI Gas’s ratepayers by materially reducing its rate base and, thereby, reducing the revenue requirement charged to retail distribution customers.¹⁶

II. FACTUAL BACKGROUND RELEVANT TO UGI GAS’S PRELIMINARY OBJECTIONS

5. On February 6, 2026, the Company filed the UGI Gas Application seeking: (1) a certificate of public convenience evidencing Commission approval under 66 Pa.C.S. §1102(a)(3) to transfer the Auburn City Gate Station to UGI Auburn Gathering, LLC (“UGI Gathering”); (2) approval of the transfer pursuant to 66 Pa.C.S. §2102(b) as a transaction between affiliated companies; and (3) approval, pursuant to 66 Pa.C.S. §2103, to modify a capacity lease between UGIES, as lessor, and UGI Gas, as lessee, to substitute UGI Gathering as successor in interest to UGIES, with all other terms and conditions of the capacity lease remaining the same.

6. The UGI Gas Application explained the genesis of the Auburn Gathering System, which consists of: (1) facilities UGIES acquired from UGI Penn Natural Gas, Inc. (“UGI PNG”) in 2011 (“Auburn I”);¹⁷ and (2) facilities constructed by UGIES after 2011 (“Auburn II”).¹⁸

¹⁵ UGI Gas Application ¶ 49.

¹⁶ See UGI Gas Application ¶ 44 and Appendix E.

¹⁷ See UGI Gas Application ¶¶ 16-21.

¹⁸ See UGI Gas Application ¶ 22.

7. The transfer of the Auburn I facilities from UGI PNG to UGIES was approved by the Commission in 2011.¹⁹ UGI Gas is the successor to UGI PNG pursuant UGI PNG's merger into UGI Gas approved by the Commission in 2018.²⁰

8. When UGI PNG transferred Auburn I to UGIES, natural gas flowed from an interconnection between Auburn I and Tennessee Gas Pipeline Company ("Tennessee"), in the north, to the Manning Regulator Station, in the south. UGI PNG served, and UGI Gas continues to serve, distribution customers located along Auburn I through interconnecting service lines emanating from that pipeline. Auburn I also fed (and continues to feed) the Manning Regulator Station, from which a distribution line retained by UGI PNG served, and UGI Gas continues to serve, the facility owned by Procter & Gamble Paper Products Company ("Procter & Gamble") located near the village of Mehoopany, Pennsylvania.

9. UGI PNG retained ownership of: (1) the Auburn City Gate Station; (2) the Manning Regulator Station and all pipeline and appurtenant facilities downstream from the Manning Regulator Station used to serve Procter & Gamble; and (3) the metering and regulation equipment and related service lines used to serve UGI PNG's retail customers located along Auburn I. UGI Gas now owns these facilities as successor by merger to UGI PNG.

10. After UGI PNG transferred the Auburn I facilities to UGIES, the flow of natural gas on Auburn I was changed to become predominantly south to north. The flow change allowed natural gas produced from Marcellus Shale gas wells located on or around the property of Procter & Gamble to enter the gathering system at the Manning Regulator Station. From that point, some

¹⁹ *Application of UGI Penn Natural Gas, Inc. for Approval of the Transfer by Sale of a 9.0 Mile Natural Gas Pipeline Appurtenant Facilities and Right-Of-Way located in Mehoopany, Pennsylvania*, Docket Nos. A-2010-2213893 and G-2010-2213894 (July 25, 2011), 2011 Pa. PUC LEXIS 1521 (hereafter cited as "*Application of UGI Penn Natural Gas.*")

²⁰ *Joint Application of UGI Utilities, Inc. and UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc.*, Docket Nos. A-2018-3000381, A-2018-3000382, and A-2018-3000383 (Sept. 20, 2018), 2018 Pa. PUC LEXIS 339.

of the natural gas flows south, through the pipeline then owned by UGI PNG, now UGI Gas, to serve Procter & Gamble, while most of the gas flows north to a new interconnection that UGIES established with Tennessee.²¹

11. Although the natural gas that had flowed from Tennessee was replaced by locally produced gas, the interconnection capable of receiving gas from Tennessee into Auburn I remained in place as an additional source of natural gas for end-use distribution customers of UGI PNG (now UGI Gas). Pursuant to the Commission's approval granted under 66 Pa.C.S. §2102(b), UGI PNG entered into a Pipeline Interconnection, Operating and Emergency Service Agreement dated October 1, 2011,²² to enable it to obtain gas from Tennessee, if needed, for delivery to the retail end-use customers of UGI PNG, including those served by interconnecting service lines from Auburn I. UGI Gas is the successor by merger to that agreement.

12. The Auburn City Gate Station is located near the point of interconnection with Tennessee.²³ As a gate station, the Auburn City Gate Station contains facilities for metering and, if necessary, pressure regulation and odorization of natural gas that UGI Gas would obtain from Tennessee to supplement, if needed, other sources of supply to serve UGI Gas's retail customers through its lease of capacity on the Auburn Gathering System.²⁴ The Auburn City Gate Station also meters gas obtained from Tennessee that is delivered by the Auburn Gathering System to Procter & Gamble. As previously noted, the Auburn City Gate Station was retained by UGI PNG (now UGI Gas) when Auburn I was transferred to UGIES.

²¹ UGI Gas Application ¶ 19. A schematic drawing of the Auburn Gathering System was provided as Exhibit D to the UGI Gas Application. *See* UGI Gas Application ¶ 12.

²² The Pipeline Interconnection, Operating and Emergency Service Agreement executed by the parties, as modified per the Commission's directives, was also approved by the Commission's Order in *Application of Penn Natural Gas*, slip op. at 30.

²³ *See* UGI Gas Application ¶ 1.

²⁴ *Id.* at ¶¶ 1, 20.

13. As explained in the UGI Gas Application, the transfer of the Auburn City Gate Station will reduce UGI Gas's rate base by \$4,453,618 as of September 30, 2026, with a corresponding reduction in revenue requirement of \$622,393²⁵ without any adverse effect on the continued safe, reliable, and reasonable service furnished by UGI Gas.²⁶

14. The reduction in UGI Gas's rate base and revenue requirement is the principal reason presented in the UGI Gas Application²⁷ for the Commission to find that the transfer of the Auburn City Gate Station to UGI Gathering satisfies the affirmative public benefit standard established by *City of York v. Pa. Pub. Util. Comm'n*²⁸ and *Popowsky v. Pa. Pub. Util. Comm'n*.²⁹ Nonetheless, in the interest of giving the Commission the full and complete picture of contemplated changes in the operation of the Auburn Gathering System that underlie UGI Auburn's FERC filing seeking certification as an interstate pipeline, the UGI Gas Application provided information about the intended future operation of UGI Auburn and the interim steps (e.g., the lease of uncommitted capacity by UGI Gathering to UGI Auburn) intended to achieve that goal. In short, substantial portions of the UGI Gas Application were provided to the Commission for informational purposes so that the Commission would be aware of the filings made with, and approvals sought from, the FERC by entities other than UGI Gas.

15. Conspicuously absent from the UGI Gas Application is any suggestion that the transfer of the Auburn City Gate Station is a legal condition precedent to UGI Auburn or UGI Gathering seeking the approvals requested in the Abbreviated FERC Application. To the contrary,

²⁵ UGI Gas Application ¶ 44.

²⁶ UGI Gas Application ¶ 49.

²⁷ See UGI Gas Application ¶¶ 39 and 44.

²⁸ 295 A.2d 825, 828 (Pa. 1972). See UGI Gas Application ¶ 31.

²⁹ 937 A.2d 1040, 1057 (Pa. 2007). See UGI Gas Application ¶ 32.

the transfer of the Auburn City Gate Station is not a condition precedent to the FERC granting those approvals.³⁰

16. As the UGI Gas Application explains, the transfer of the Auburn City Gate Station “supports” the change to FERC jurisdictional status of the Auburn Gathering System.³¹ Those statements are accurate within the context of the current operation of the Auburn Gathering System and the anticipated future operation of UGI Auburn as a FERC-regulated interstate pipeline. As explained below, the transfer of the Auburn City Gate Station supports the change in jurisdictional status of UGI Auburn because it will properly align the Auburn City Gate Station’s function with the gathering operations of the Auburn Gathering System and the future operation of a portion of that capacity as a FERC-regulated interstate pipeline.

17. The interconnection of Tennessee with the distribution system of UGI PNG (now UGI Gas) predated the transfer of Auburn I to UGIES that led to the formation of the Auburn Gathering System. The Auburn City Gate Station is a metering point associated with the Tennessee interconnection and, as such, also predated the transfer of Auburn I to UGIES.

18. The aforementioned Tennessee interconnection is available under the Pipeline Interconnection, Operating and Emergency Service Agreement to flow gas into the Auburn I facilities previously owned by UGI PNG that now comprise the Auburn Gathering System.

19. UGI Gas does not own the Auburn Gathering System. Currently, UGI Gas leases capacity on the Auburn Gathering System to move gas from the Tennessee interconnection (if needed) pursuant to the Pipeline Interconnection, Operating and Emergency Service Agreement.³² The Auburn City Gate Station serves the principal purpose of metering gas obtained from the

³⁰ See Paragraph No. 4, *supra*.

³¹ See UGI Gas Application ¶¶ 4 and 41.

³² See Paragraph Nos. 11-12, *supra*, and UGI Gas Application ¶ 2.

Tennessee interconnection to serve, if needed, downstream delivery points either through the capacity UGI Gas leases on the Auburn Gathering System or for delivery by the Auburn Gathering System to other downstream delivery points. Thus, the Auburn City Gate Station aligns more closely with the functionality of the Auburn Gathering System than the retail distribution service furnished by UGI Gas.

20. Additionally, if UGI Auburn is certificated by the FERC as an interstate pipeline, UGI Auburn will essentially be subject to the jurisdiction of the FERC from the Tennessee interconnection, in the north, to the interconnection with Transcontinental Gas Pipeline Company (“Transco”), in the south.³³

21. Under the facts and circumstances described in Paragraph Nos. 17-20, above, the continued ownership of the Auburn City Gate Station by UGI Gas is not necessary to maintain safe, reliable, and reasonable service by UGI Gas to its retail distribution customers. Moreover, UGI Gas’s continued ownership of the Auburn City Gate Station is also not required where, as UGI Gas has demonstrated, transferring ownership to UGI Gathering will materially reduce the revenue requirement borne by UGI Gas’s retail distribution customers.³⁴ Thus, the UGI Gas Application correctly states that the transfer of the Auburn City Gate Station supports the Abbreviated FERC Application’s request to certify uncommitted capacity leased to UGI Auburn as a FERC-regulated interstate pipeline without such transfer being a legal condition precedent to UGI Auburn’s obtaining the approvals requested in the Abbreviated FERC Application. Simply stated, both currently (given the existing operation of the Auburn Gathering System) and in the future (if UGI Auburn is certificated as an interstate pipeline), it is more reasonable for the Auburn City Gate Station to be owned by UGI Gathering and subject to the lease to UGI Auburn.

³³ See UGI Gas Application ¶¶ 4(a) and 4(b), 46, 48, 49.

³⁴ See UGI Gas Application ¶ 44 and Exhibit E.

III. PRELIMINARY OBJECTION NO. 1: THE COMMISSION DOES NOT HAVE SUBJECT MATTER JURISDICTION TO ADJUDICATE CONTRACT DISPUTES

22. BKV asserts an interest in this proceeding based on a “Gathering Agreement” with UGIES.³⁵ UGI Gas is not a party to the Gathering Agreement. A copy of the “Gathering Agreement” was not attached to, or provided with, the Petition and Protest, and, therefore, UGI Gas did not have access to that agreement.

23. UGIES is not a Pennsylvania public utility.³⁶ BKV is a well head producer of natural gas³⁷ and, as such, is not a Pennsylvania public utility.³⁸

24. Throughout the Petition and Protest, BKV repeatedly states that its interest in this proceeding is based upon the Gathering Agreement³⁹ because, according to BKV: (1) the Gathering Agreement purportedly created a “contractual expectation” that BKV could obtain “additional capacity” on the Auburn Gathering System in excess of that stated in the Gathering Agreement;⁴⁰ and (2) “BKV enjoys a contractual right of first refusal for any unused capacity” on the Auburn Gathering System.⁴¹ BKV further alleges that UGI Gathering’s lease of capacity to UGI Auburn of uncommitted capacity on the Auburn Gathering System, for which approval from the FERC is sought in the Abbreviated FERC Application, contravenes rights to which BKV believes it is entitled under the Gathering Agreement: “BKV has a direct, immediate, and

³⁵ See Petition and Protest ¶¶ 4, 14, 16, 20, 22.

³⁶ See *Application of Laser Northeast Gathering Company, LLC for Approval to Begin to Offer, Render, Furnish, or Supply Natural Gas Gathering and Transporting or Conveying Service by Pipeline to the Public in Certain Townships of Susquehanna County, Pennsylvania*, Docket No. A-2010-2153371 (Dec. 5, 2011), slip op. at 6 (Gathering service is not subject to the jurisdiction of the Commission unless the putative gatherer “[holds] itself out to all members of the customer group that have a need for its service and, as such, was providing service ‘for the public’ under Section 102 of the Code, 66 Pa.C.S. § 102.”) UGIES does not hold itself out to provide service to or for the public and, therefore, is not required to obtain a certificate of public convenience.

³⁷ Petition and Protest ¶ 2.

³⁸ 66 Pa.C.S. § 102 defining “public utility” and stating that a “public utility” does not include “[a]ny producer of natural gas not engaged in distributing such gas directly to the public for compensation.”

³⁹ See, e.g., Petition and Protest ¶¶ 14, 16, 20.

⁴⁰ Petition and Protest ¶ 19.

⁴¹ Petition and Protest ¶ 20.

substantial interest in the outcome of this proceeding” because “[t]he proposed transfer and associated transactions will directly and adversely affect BKV’s contractual rights under the Gathering Agreement.”⁴²

25. BKV’s Petition and Protest are fundamentally based upon its claim that the Gathering Agreement confers contractual rights on BKV and contractual obligations on UGIES that must be decided by the Commission as part of its decision whether to grant the approval requested by UGI Gas to transfer the Auburn City Gate Station to UGI Gathering. In fact, BKV made this contention no less than seventeen times in the Petition and Protest.⁴³

26. The Commission does not have subject matter jurisdiction to adjudicate or decide a private contractual issue between two parties (BKV and UGIES) where: (1) neither party is a public utility or otherwise subject to the regulatory authority of the PUC; and (2) the contract involves a service that is not subject to the Commission’s jurisdiction.

27. Pennsylvania appellate courts have repeatedly held that the Commission does not have subject matter jurisdiction to decide contract issues even if one of the parties to that contract is a Pennsylvania public utility. Thus, in *Feingold v. Bell of Pennsylvania*, the Pennsylvania Supreme Court held as follows:

Since the PUC is a creature of statute, it has only those powers which are expressly conferred upon it by the legislature and those powers which arise by necessary implication. *Allegheny County Port Authority v. Pa. P.U.C.*, 427 Pa. 562, 237 A.2d 602 (1967); *Delaware River Port Authority v. Pa. P.U.C.*, 393 Pa. 639, 145 A.2d 172 (1958)

It is relevant to the case now before us that the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can

⁴² Petition and Protest ¶ 22.

⁴³ See Petition and Protest ¶¶ 6, 14, 16, 19 (twice), 20 (twice), 22, 25, 26, 33, 35, 37 (twice), 38, 49, and 50.

be concluded that the Legislature did not intend for the PUC to have such a power.⁴⁴

28. Similarly, in *Leveto v. National Fuel Gas Dist. Corp.*, the Pennsylvania Superior Court held as follows:

Thus, in the instant case, the court found that the agreement upon which plaintiffs sought relief was a private agreement unaffected by the conditional regulation of the PUC. While it is true that certain aspects of a utility's contracts are specifically regulated by the Public Utility Law, the act does not grant the PUC general supervisory power over contracts. *See Meyers v. Pennsylvania PUC*, 164 Pa. Super. 431, 65 A.2d 256 (1949). *Cf. NAACP, Inc. v. Pennsylvania PUC*, 5 Pa.Cmwlth. 312, 290 A.2d 704 (1972). Since the case at bar involves a private contractual dispute between a citizen and a utility, the PUC is not jurisdictionally empowered to decide it. *Reading & S. W. St. Ry. Co. v. Pennsylvania PUC*, 168 Pa. Super. 61, 77 A.2d 102 (1950).⁴⁵

29. In each of the appellate decisions cited above, the putative basis for asserting that the matter might lie within the subject matter jurisdiction of the Commission was the fact that one party was a Pennsylvania public utility. That is not the case with the Gathering Agreement that BKV has repeatedly stated is the principal basis for its claim that it has a legally cognizable interest in this proceeding.

30. Neither party to the Gathering Agreement is a Pennsylvania public utility, and the subject of the Gathering Agreement, as its name clearly indicates, pertains to a gathering service that is not subject to the jurisdiction of the Commission. The interest that BKV advances as the alleged basis for its intervention and protest is derived solely from a private contract that lacks any

⁴⁴ 383 A.2d 791, 794 (Pa. 1977)

⁴⁵ 366 A.2d 270, 275 (Pa. Super. 1976). *Accord Fairview Water Co. v. Pa. P.U.C.*, 502 A.2d 162, 165-166 (Pa. 1985) (The Pennsylvania Public Utility Code does not provide the PUC with the necessary jurisdiction to determine the scope and validity of an easement.); *Adams v. Pa. P.U.C.*, 819 A.2d 631, 635 (Pa. Cmwlth. 2003) (“The rights asserted by Petitioners derive from a private contract, and the PUC lacks jurisdiction over private contractual disputes.”); *Poorbaugh v. Pa. P.U.C.*, 666 A.2d 744, 751 (Pa. Cmlth. 1995) (“[T]he present case does not raise any questions about how West Penn’s services or facilities affect the general public. In weighing the various considerations articulated by our Supreme Court with respect to the primary jurisdiction of the PUC, we conclude that jurisdiction over Poorbaugh’s claims should have been vested in the trial court, not the PUC.”)

legally cognizable nexus to this proceeding. Additionally, the relief BKV seeks in this proceeding would, by necessity, embroil the Commission in interpreting the terms of the Gathering Agreement. As long-standing appellate court precedent firmly establishes, the Commission lacks subject matter jurisdiction to adjudicate the terms and conditions of the Gathering Agreement. Therefore, BKV's Petition and Protest should be dismissed for lack of subject matter jurisdiction.

IV. PRELIMINARY OBJECTION NO. 2: THE COMMISSION DOES NOT HAVE SUBJECT MATTER JURISDICTION TO ADJUDICATE ISSUES THAT ARE WITHIN THE EXCLUSIVE JURISDICTION OF THE FERC UNDER THE NATURAL GAS ACT

31. BKV also avers its Petition to Intervene should be granted and its Protest should be entertained by the Commission because it intends to raise issues in this proceeding about discrimination it allegedly would experience if uncommitted capacity on the Auburn Gathering System were certificated as an interstate natural gas pipeline by the FERC as requested in the Abbreviated FERC Application.

32. The Petition and Protest contain broadly stated claims of unspecified "discriminatory outcomes" and "discriminatory conduct."⁴⁶ However, BKV's only specific averments of "discrimination" allege that, under the Abbreviated FERC Application and pro forma tariff UGI Auburn filed at the FERC: (1) BKV would be denied "receipt points" on the FERC-certificated pipeline;⁴⁷ and (2) the FERC could certificate the pipeline to operate at pressures allegedly exceeding those achievable by BKV.⁴⁸ Both of those issues are currently before the FERC because BKV already raised them in that forum, as BKV concedes in the Paragraph No. 10 of the Petition and Protest, where it explains that BKV intervened and protested the FERC Application by the Motion to Intervene and Protest it filed at FERC Docket No. CP26-9 on November 13, 2025. In

⁴⁶ See, e.g., Petition and Protest ¶¶ 1, 48, 51.

⁴⁷ Petition and Protest ¶¶ 10, 23, 37, 44, 49.

⁴⁸ Petition and Protest ¶¶ 33, 39.

fact, large portions of BKV’s Motion to Intervene and Protest filed at the FERC are similar, if not identical, to averments made in the Petition and Protest.

33. The Commission lacks subject matter jurisdiction to address the issues of: (1) whether additional “receipt points” should be designated under UGI Auburn’s pro forma tariff filed at the FERC; and (2) whether UGI Auburn’s operating pressures as an interstate pipeline would exceed those of BKV and, therefore, could impose additional operating costs BKV does not currently incur to inject gas into the gathering facilities of intervening gatherers.

34. The issues BKV attempts to raise in this proceeding are within the exclusive jurisdiction of the FERC under Section 1(b) of the Natural Gas Act,⁴⁹ as the U.S. Supreme Court has definitively held in *Schneiderwind v. ANR Pipeline Co.*:

The NGA [Natural Gas Act] long has been recognized as a "comprehensive scheme of federal regulation of all wholesales of natural gas in interstate commerce." *Northern Natural Gas Co. v. State Corporation Comm'n of Kansas*, 372 U. S. 84, 91 (1963), quoting *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, 682 (1954).⁶ The NGA confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale. *Northern Natural Gas Co.*, 372 U. S., at 89. FERC exercises authority over the rates and facilities of natural gas companies used in this transportation and sale through a variety of powers.⁵⁰

35. In *Schneiderwind*, the U.S. Supreme Court further explained the requirements of the Natural Gas Act that the FERC must observe:

[A] natural gas company must obtain from FERC a “certificate of public convenience and necessity” before it constructs, extends, acquires, or operates any facility for the transportation or sale of natural gas in interstate commerce. § 7(c)(1)(A) of the NGA, as amended, 15 U. S. C. § 717f(c)(1)(A). FERC will grant the

⁴⁹ 15 U.S.C. § 717(b).

⁵⁰ *Schneiderwind v. ANR Pipeline Co.*, 485 U.S. 293, 300-301 (1988). *Accord Sierra Club v. Louisiana Dep’t of Env’t Quality*, 100 F.4th 556, 563 (U.S.C.A 5th Cir. 2024) (The NGA is “a comprehensive scheme of federal regulation” intended to address the sale and transmission of natural gas. *N. Nat. Gas Co. v. State Corp. Comm’n of Kan.*, 372 U.S. 84, 91, 83 S. Ct. 646, 9 L.Ed. 2d 601 (1963). As such, “[t]he NGA confers upon FERC [exclusive jurisdiction] over the transportation and sale of natural gas in interstate commerce for resale.” *Schneiderwind v. ANR Pipeline Co.*, 485 U.S. 293, 300-01, 108 S. Ct. 1145, 99 L. Ed. 2d 316 (1988).”)

certificate only if it finds the company able and willing to undertake the project in compliance with the rules and regulations of the federal regulatory scheme. § 7(e), as amended, 15 U. S. C. § 717f(e). FERC may attach "to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require." *Ibid.*⁵¹

36. As noted in the foregoing quotation from *Schneiderwind*, the FERC has both subject matter jurisdiction and adequate authority to address the issues that BKV is improperly attempting to interject in this proceeding.⁵² In fact, BKV concedes this point by seeking a “stay” of this proceeding to allow the FERC to decide issues that BKV acknowledges are properly within FERC’s jurisdiction.⁵³

In the FERC Proceeding, BKV raised substantive concerns about the impact of the proposed capacity lease and interstate transportation service on Auburn’s existing gathering customers. BKV has requested that the [Federal Energy Regulatory] Commission deny the FERC Application or, in the alternative, conduct additional evidentiary hearings to determine what adequate mitigation measures should be implemented before the proposed capacity lease can be approved.

If the [Pennsylvania Public Utility] Commission elects not to deny the [UGI Gas] Application outright, BKV requests that it stay this proceeding pending the resolution of the FERC Proceeding for the foregoing reasons.⁵⁴

37. The specific averments of alleged “discrimination” that BKV advances in the Petition and Protest as its purported “interest” in this proceeding are not within the subject matter jurisdiction of the Commission but, instead, are within the exclusive jurisdiction of the FERC

⁵¹ 485 U.S. 293, 302.

⁵² As noted in *Schneiderwind*, *supra*, the FERC could attach conditions to its grant of a certificate requiring additional receipt points or specifying operating pressures. Those matters are properly within the exclusive jurisdiction of the FERC to decide based on the record developed before that agency.

⁵³ See Petition and Protest ¶¶ 55-57.

⁵⁴ Petition and Protest ¶¶ 56, 58.

under the Natural Gas Act. As such, the issues that BKV attempts to interject in this proceeding are pre-empted by the Natural Gas Act:

The circumstances in which federal law pre-empts state regulation are familiar. *See Arkansas Elec. Coop. Corp. v. Arkansas Public Serv. Comm'n*, 461 U. S. 375, 383 (1983). *See also Fidelity Federal Savings & Loan Assn. v. De la Cuesta*, 458 U. S. 141, 152-154 (1982). A pre-emption question requires an examination of congressional intent. *Id.*, at 152. Of course, Congress explicitly may define the extent to which its enactments preempt state law. *See, e. g., Shaw v. Delta Air Lines, Inc.*, 463 U. S. 85, 95-96 (1983). In the absence of explicit statutory language, however, Congress implicitly may indicate an intent to occupy a given field to the exclusion of state law. Such a purpose properly may be inferred where the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where “the object sought to be obtained by the federal law and the character of obligations imposed by it . . . reveal the same purpose.” *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). Finally, even where Congress has not entirely displaced state regulation in a particular field, state law is pre-empted when it actually conflicts with federal law. Such a conflict will be found “when it is impossible to comply with both state and federal law, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U. S. 132, 142-143 (1963), or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress, *Hines v. Davidowitz*, 312 U. S. 52, 67 (1941).” *California Coastal Comm'n. v. Granite Rock Co.*, 480 U. S. 572, 581 (1987) (slip op. 7), quoting *Silkwood v. Kerr-McGee Corp.*, 464 U. S. 238, 248 (1984).

In this case we conclude that [Michigan] Act 144 regulates in a field the NGA has occupied to the exclusion of state law, and that it therefore is pre-empted.⁵⁵

38. BKV has not articulated any valid “interest” in this proceeding that this Commission has subject matter jurisdiction to decide. Accordingly, there is not a valid basis for BKV’s intervention or protest, and BKV’s Petition and Protest should be dismissed.

⁵⁵ *Schneiderwind*, 485 U.S. at 300. In *Schneiderwind*, the issue before the U.S. Supreme Court was whether a Michigan statute that sought to regulate securities issuances by a FERC-regulated natural gas pipeline was preempted by the Natural Gas Act. The Court held that it was. In this case, the issues BKV tries to interject lie at the heart of the Natural Gas Act’s regulatory domain because they directly pertain to terms and conditions of service of an entity seeking a certificate of public convenience and necessity to operate as an interstate pipeline.

V. PRELIMINARY OBJECTION NO. 3: BKV'S PETITION AND PROTEST ARE LEGALLY INSUFFICIENT BECAUSE THEY ARE BASED ON A DEMONSTRABLY ERRONEOUS LEGAL PREMISE

39. Paragraph No. 56 of the Petition and Protest states as follows:

If the FERC Application is denied, the proposed transfer [of the Auburn City Gate Station] will be rendered meaningless, as its core objective – enabling interstate transportation on Auburn – cannot be achieved.⁵⁶

40. As evidenced by Paragraph No. 56 of the Petition and Protest, BKV's intervention and protest are premised on the erroneous legal conclusion that the transfer of the Auburn City Gate Station to UGI Gathering is a legal condition precedent to UGI Gathering and UGI Auburn obtaining the approvals and certification sought in the Abbreviated FERC Application. That is clearly not the case. UGI Gas need not transfer the Auburn City Gate Station to UGI Gathering nor must UGI Gathering own and operate that gate station as a pre-condition to UGI Gathering and UGI Auburn seeking and obtaining the approvals and certification requested from the FERC.

41. The averments of Paragraph Nos. 5-21 of these Preliminary Objections are incorporated by reference here as if set forth at length.

42. As UGI Gas has previously explained,⁵⁷ the grounds for seeking approval to transfer the Auburn City Gate Station to UGI Gathering are: (1) the function of the Auburn City Gate Station more closely aligns with the functionality of the Auburn Gathering System both currently and if the uncommitted capacity on that system is operated as an interstate pipeline under authority conferred by the FERC; (2) UGI Gas's retaining ownership of the Auburn City Gate Station is not necessary for UGI Gas to furnish safe, reliable, and reasonable service to its retail customers; and

⁵⁶ See also Petition and Protest ¶ 6, which alleges that “[t]he instant proceeding is an integral part of that broader enterprise, which eliminates gathering capacity that would otherwise be used to deliver locally produced gas to retail customers served on Auburn. . .”

⁵⁷ See Paragraph Nos. 5-21, as incorporated in Paragraph No. 42 *supra*.

(3) transferring the Auburn City Gate Station as requested in the UGI Gas Application will reduce UGI Gas's rate base by \$4,453,618 as of September 30, 2026, which, in turn would reduce its revenue requirement by \$622,393.⁵⁸

43. The Commission's regulation at 52 Pa. Code § 5.101(a)(4) authorizes Preliminary Objections to be filed if a pleading is legally insufficient.

44. The Petition and Protest are legally insufficient. The premise underlying BKV's Petition to Intervene and Protest is erroneous. BKV incorrectly assumes that the transfer of the Auburn City Gate Station is a legal requirement that must be completed before, or as part of, the process of seeking and obtaining the FERC's approval of the Abbreviated FERC Filing. It is not. Significantly, UGI Gas did not ask the Commission to condition approval of the UGI Gas Application on the outcome of the FERC proceeding, which is evidence that UGI Gas did not consider the transfer of the Auburn City Gate Station a legal condition precedent to UGI Gathering or UGI Auburn seeking the approvals requested in the Abbreviated FERC Application (i.e., the fundamental premise underlying the Petition and Protest). Moreover, the timing of the UGI Gas Application's filing and the probable conclusion of this proceeding do not align with the BKV's averments that a completed transfer of the Auburn City Gate Station is a condition precedent to the approvals requested in the Abbreviated FERC Application. If the transfer of the Auburn City Gate Station were a pre-condition to the UGI Gathering and UGI Auburn FERC filing, as BKV alleges, then UGI Gas would have filed the UGI Gas Application well *before* the Abbreviated FERC Application was lodged with the FERC. That was not the case. The Abbreviated FERC Application was filed on October 10, 2025, but the UGI Gas Application was not filed until almost four months later.

⁵⁸ UGI Gas Application ¶ 44 and Exhibit E.

45. UGI Gathering and UGI Auburn are not legally precluded from obtaining the approvals and certification requested in the Abbreviated FERC Application if UGI Gas does not transfer the Auburn City Gate Station as requested in the UGI Gas Application. While there are good and valid reasons why the Commission should grant the UGI Gas Application, absent such a transfer, UGI Gas could provide transportation service through the Auburn City Gate Station pursuant to its blanket certificate⁵⁹ under FERC Order 63.⁶⁰

46. FERC Order 63 established regulations for natural gas transportation by intrastate pipelines under Section 311 of the Natural Gas Policy Act (“NGPA”),⁶¹ allowing them to transport gas for interstate pipelines or local distribution companies without becoming subject to the jurisdiction of the FERC under the Natural Gas Act.

47. Although UGI Gas could use its Order 63 blanket certificate to transport gas through the Auburn City Gate Station, that transportation would consist solely of moving gas from the inlet flange of the gate station to the outlet flange of the gate station. There are two significant disadvantages to this approach. First, it would entail an investment of UGI Gas’s time and administrative attention that could be avoided by approving the transfer requested in the UGI Gas Application. Second, and more significantly, if UGI Gas relied on its blanket certificate to transport gas through the Auburn City Gate Station, UGI Gas’s customers would not benefit from a rate base reduction of \$4,453,618 as of September 30, 2026, and the consequent reduction in its retail distribution revenue requirement of \$622,393. Under these circumstances, it is more

⁵⁹ 18 CFR § 284.224. A FERC blanket certificate for the transportation of natural gas under Order 63 is a streamlined authorization granted by the FERC that allows local distribution companies, as “Hinshaw pipelines,” to transport natural gas in interstate commerce without needing a case-specific certificate for every transaction. Hinshaw pipelines are those that receive gas within, or at, a state boundary and deliver it for use entirely within that state. *See* 15 U.S.C. § 717(c). UGI Gas, as a local distribution company in Pennsylvania, is a Hinshaw pipeline, and already holds a blanket certificate that would allow it to transport gas through the Auburn City Gate Station.

⁶⁰ *Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats & Regs. ¶ 30,118 at 30,824-25 (1980).

⁶¹ 15 U.S.C. § 3371.

reasonable to approve the transfer of the Auburn City Gate Station, which provides material attendant benefits to UGI Gas's retail distribution customers.

48. The Commission's procedures for deciding preliminary objections are similar to those in Pennsylvania civil practice.⁶² A preliminary objection based on legal insufficiency is comparable to a demurrer in civil practice (i.e., even if all the facts pled by a party were assumed to be true, it failed to state grounds on which the Commission could provide the requested relief).⁶³

49. The party asserting a preliminary objection in the nature of a demurrer may not rely on its own factual averments, and the Commission must assume, solely for purposes of ruling on such a preliminary objection, that the facts pleaded by the non-moving party are true.⁶⁴ Moreover, in deciding whether to sustain a preliminary objection, the Commission is "not required to accept as true legal conclusions, unwarranted factual inferences, allegations that constitute argument, or mere opinion."⁶⁵ However, if there are no disputed issues of fact, a preliminary objection is properly granted if the moving party is entitled to prevail as a matter of law, as the Commonwealth Court held in *Lehigh Valley Power Comm. v. Pa. P.U.C.*:

It is a fundamental proposition of law that a hearing or trial procedure is necessary only to resolve disputed questions of fact and is not required to decide questions of law, policy, or discretion. *See Davis, Administrative Law Treatise*, §§ 12:2, and 14:1-14:3 (1979-80). LVPC was provided the opportunity to present argument on this issue and the Commission considered and rejected LVPC's contentions . . .⁶⁶

⁶² *Piekara v. PECO Energy Co.*, 2012 Pa. PUC LEXIS 1645 at *4, Docket No C-2012-2323880 (Initial Dec. Oct. 25, 2012, aff'd per Final Order Dec. 19, 2012); *Karpinski v. PECO Energy Co.*, 2008 Pa. PUC LEXIS 655 at *4, Docket No. C-2008-2042498 (Initial Dec. Sep. 15, 2008, aff'd per Final Order Dec. 11, 2008).

⁶³ *Id.* See also Pa. Rules of Civil Procedure 1028(a)(4).

⁶⁴ See *Piekara v. PECO Energy Co.*, *supra* at *4-5.

⁶⁵ *Karpinski v. PECO Energy Co.*, *supra* at *3-4, citing *Cohen v. City of Philadelphia*, 806 A.2d 905, 912 (Pa. Cmwlth. 2002), aff'd, 840 A.2d 988 (2003).

⁶⁶ 563 A.2d 548, 556 (1989). Accord *Piekara v. PECO Energy Co.*, *supra*, at *9-10; *Karpinski v. PECO Energy Co.*, *supra* at *5-6. (Granting preliminary objections and citing *Lehigh Valley Power Comm. v. Pa. P.U.C.* as support).

50. UGI Gas has satisfied the legal standard for granting its preliminary objection based on the legal insufficiency of BKV's Petition and Protest. UGI Gas has another means of moving gas through the Auburn City Gate Station that would not require the transfer of that facility to UGI Gathering, as explained in Paragraph Nos. 44-47, above. UGI Gas's legal entitlement to transport gas through the Auburn City Gate Station is evidenced by its blanket certificate issued by the FERC under Order 63, as also explained above.⁶⁷ All the averments of the Petition and Protest premised on BKV's erroneous legal conclusion that UGI Gathering and UGI Auburn could not seek or obtain the approvals requested in the Abbreviated FERC Application without the transfer of the Auburn City Gate Station are wrong as a matter of law, and UGI Gas has satisfied the legal standard for the Commission to grant its Preliminary Objection No. 3.

51. Accordingly, the Petition and Protest should be dismissed because it is legally insufficient. The fundamental legal premise underlying BKV's Petition and Protest is invalid for the reasons set forth above.

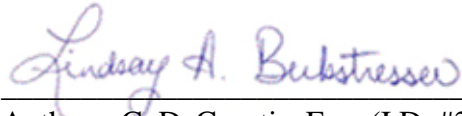
VI. CONCLUSION

THEREFORE, for all the reasons set forth above, Preliminary Objection Nos. 1-3 of UGI Gas should be granted, and BKV's Petition and Protest should be dismissed because: (1) the Commission does not have subject matter jurisdiction to adjudicate and decide issues pertaining to a contract issue between two non-utilities involving a service that is not regulated by the Commission; (2) issues that BKV seeks to interject in this case are within the exclusive jurisdiction of the FERC under the Natural Gas Act; and (3) the BKV's Petition to Intervene and Protest are legally insufficient because they assume that the transfer of the Auburn City Gate Station is a

⁶⁷ Moreover, if there were any issue about UGI Gas's right to transport gas through the Auburn City Gate Station under its blanket FERC certificate – and there is not – that issue would be within the jurisdiction of the FERC under the Natural Gas Act and, therefore, not subject to the Commission's subject matter jurisdiction, for the reasons previously discussed with regard to UGI Gas Preliminary Objection No. 2.

legally required condition precedent for UGI Gathering and UGI Auburn to file for, and obtain, the approvals sought in the Abbreviated FERC Application, which is not correct.

Respectfully submitted,



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