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March 27, 2026

VIA ELECTRONIC FILING

Matthew L. 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 is the Petition of UGI Utilities, Inc – Gas Division for Reconsideration or Clarification for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/bfc
Attachment

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

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Phoenixwdkelley@hotmail.com

Date: March 27, 2026



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION OF UGI UTILITIES, INC. – GAS DIVISION FOR
RECONSIDERATION OR CLARIFICATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

UGI Utilities, Inc. – Gas Division (“UGI Gas” or the “Company”) hereby petitions the Pennsylvania Public Utility Commission (“Commission”) pursuant to 52 Pa. Code § 5.572 for clarification of the Commission’s Order entered on March 12, 2026, at Docket No. F-2023-3038216 (“Order”). In the Order, the Commission denied UGI Gas’s Exceptions, adopted the Initial Decision as modified by the Order, sustained the Complaint, limited the Company’s recovery of the underbilled balance to the \$500 already paid by the Complainant, and directed the Company to pay a civil penalty of \$1,500. *See* Order, pp. 30-32.

UGI Gas respectfully requests reconsideration or clarification of the Commission’s Order. In the Order, the Commission “decline[d] to remand the matter to reopen the record to allow UGI another opportunity to satisfy its burden of proof.” *Id.*, p. 30 (emphasis added). Such as remand would, as the Commission notes, enable UGI Gas to “theoretically conduct a comprehensive accounting of all metered charges and credits at issue, and thereafter, attempt to adequately reconcile the exact amount owed by the Complainant.” *Id.*, pp. 29-30. However, the Commission

reasoned that the Company “has already been afforded a full and fair opportunity to meet its burden, and failed to do so in this case.” *Id.*, p. 30 (emphasis added). Elsewhere, the Commission determined that after “the Complainant established a *prima facie* case,” the Complainant’s “challenge shifted the burden of persuasion to the Company to demonstrate which party owed, and how much, using a comprehensive accounting and reconciliation of all usage and payments as in *Jergons*.” *Id.*, p. 22 (emphasis added). The Commission also asserted that “[w]hile the evidentiary burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts.” *Id.*, p. 7 (emphasis added).

The Commission’s statements regarding the burden of proof and burden of persuasion contradict well-established and binding law and, therefore, warrant reconsideration or clarification. Under Pennsylvania law, neither the burden of proof nor the burden of persuasion can shift from the party seeking affirmative relief.¹ Only the burden of production can shift to the non-moving party.² As such, the Commission evidently based its Order, including its decision not to remand this matter, on a flawed legal basis—that UGI Gas had either the burden of proof or the burden of persuasion in this matter. *See* Order, pp. 7, 22, 29-30. Indeed, even if the Complainant established a *prima facie* case, only the burden of production could have shifted to UGI Gas.³

Thus, the Commission should reconsider its Order and remand the matter for the Company to present the “comprehensive accounting and reconciliation” that the Commission found was lacking. *Id.*, p. 22. At the very least, the Commission should clarify its misstatements on the

¹ *See, e.g.*, 66 Pa. C.S. § 332(a) (declaring that “the proponent of a rule or order has the burden of proof”); *Borough of Middletown v. Pa. PUC*, 301 A.3d 965, 975 (Pa. Cmwlth. 2023) (finding that “the burden of proof is comprised of two, distinct burdens: the burden of production and the burden of persuasion” and that “[t]he burden of persuasion never leaves the proponent of the order, but the burden of production may shift during the proceedings”) (emphasis added) (citations omitted); *Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (stating that “[o]nce it is determined that the complainant has made out a prima facie case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with the complainant”).

² *See Middletown*, 301 A.3d at 975; *Milkie*, 768 A.2d at 1220.

³ *See* note 1, *supra*.

burden of proof and the burden of persuasion to ensure that they are consistent with Pennsylvania law.

UGI Gas also respectfully requests clarification on whether a Protective Order is necessary to present the required “comprehensive accounting and reconciliation of all usage and payments as in *Jergons*.” *Id.*, p. 22; *see also id.*, p. 2. Such a presentation would require disclosing both usage and payment information for the other customer(s) affected in a meter mix-up. However, in *Jergons*, the affected customers were a father and daughter.⁴ Conversely, nothing in the record here establishes that the Complainant and the other affected customer are relatives. Therefore, UGI Gas would like clarification on how, in a meter mix-up case, the Company should present this accounting for all the affected customers’ usage and payments where the affected customers are not relatives and are not all parties to the litigation, while still protecting the privacy of the affected customers.

For these reasons, and as explained in more detail below, UGI Gas respectfully requests that the Commission grant this Petition, modify the Order, and remand for further proceedings.

II. INTRODUCTION

1. On February 6, 2023, the Complainant filed the Complaint against UGI Gas.
2. On April 11, 2023, UGI Gas was served with the Complaint.
3. On April 28, 2023, the Company filed its Answer to the Complaint.
4. On July 7, 2023, the evidentiary hearing was held before Administrative Law Judge Dennis Buckley (“ALJ Buckley”).
5. On January 17, 2024, a further evidentiary hearing was held before ALJ Buckley.

⁴ *Jergons v. Duquesne Light Co.*, Docket No. F-2010-2170457, pp. 1-3 (Initial Decision dated Apr. 29, 2011) (“*Jergons ID*”), *adopted*, F-2010-2170457 (Order entered June 30, 2011).

6. On April 23, 2025, a Notice was issued assigning the case to Administrative Law Judge Emily Farren (“ALJ Farren”).

7. On May 14, 2025, the Commission issued the Initial Decision of ALJ Farren sustaining the Complaint.

8. On June 3, 2025, UGI Gas filed Exceptions to the Initial Decision.

9. No Replies to Exceptions were filed.

10. On March 12, 2026, the Commission entered its Order denying UGI Gas’s Exceptions, adopting the Initial Decision as modified by the Order, sustaining the Complaint, limiting the Company’s recovery of the underbilled balance to the \$500 already paid by the Complainant, and directing the Company to pay a civil penalty of \$1,500.

III. THE STANDARD FOR GRANT OF RECONSIDERATION OR CLARIFICATION HAS BEEN MET

11. The Commission’s standards for granting reconsideration following final orders are set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

12. The Commission has cautioned that the operative language of the *Duick* standard focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v PPL Electric Utilities Corp.*, Docket No. R-2012-2290597 (Order entered May 22, 2014).

13. In the Order, the Commission declared that UGI Gas had the burden of proof and the burden of persuasion. *See* Order, pp. 7, 22, 29-30.

14. The Commission's declarations contravene well-established and binding law, including Section 332(a) of the Public Utility Code, as explained in the following section. *See* 66 Pa. C.S. § 332(a).

15. Furthermore, the Commission declared in its Order that the Company should have presented a "comprehensive accounting and reconciliation" in this meter mix-up case, stating specifically:

Our decision is based upon the Company's lack of a comprehensive accounting and reconciliation analyzing both the usage by, and payments from, all the gas customers involved where incorrect billing resulted from the Company's improperly identified, installed, and monitored meters which had been used to bill for service. The absence of a comprehensive accounting and reconciliation of all applicable payments and credits by all impacted parties deprives the Commission of the evidence needed to determine which party owed, and how much, in this payment dispute arising in the context of a switched meter.

Order, p. 2.

16. The Commission did not address how to address the privacy concerns associated with presenting such a "comprehensive accounting and reconciliation" for other customers' usage and payment information that are not parties to the case.

17. These new and novel issues have not been addressed in this proceeding and, more importantly, raise important legal issues that were overlooked or not considered by the Commission in its Order.

18. Therefore, these issues clearly satisfy the Commission's standards for reconsideration under *Duick, supra*, and the Commission should grant reconsideration or clarification of its Order and remand for further proceedings, as set forth in the following section.

IV. ARGUMENT FOR RECONSIDERATION OR CLARIFICATION

19. The Commission should reconsider or clarify its Order due to misstatements and misapplication of law related to the burden of proof and the burden of persuasion.

20. In its Order, the Commission sustained the Complaint against UGI Gas, largely on the Company's purported failure to present a "comprehensive accounting of all metered charges and credits at issue, and thereafter, attempt to adequately reconcile the exact amount owed by the Complainant." Order, pp. 29-30.

21. Although a remand would enable the Company to present such a "comprehensive accounting," the Commission "decline[d] to remand the matter to reopen the record to allow UGI another opportunity to satisfy its burden of proof." Order, p. 30 (emphasis added). According to the Commission, the Company "has already been afforded a full and fair opportunity to meet its burden, and failed to do so in this case." *Id.*, p. 30 (emphasis added). Additionally, the Commission held that after "the Complainant established a *prima facie* case," the Complainant's "challenge shifted the burden of persuasion to the Company to demonstrate which party owed, and how much, using a comprehensive accounting and reconciliation of all usage and payments as in *Jergons.*" *Id.*, p. 22 (emphasis added). Further, in the "Burden of Proof" section of its Order, the Commission declared that "[w]hile the evidentiary burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts." *Id.*, p. 7 (emphasis added).

22. The Order's statements regarding the burden of proof and burden of persuasion contradict well-established and binding law. Section 332(a) of the Public Utility Code squarely places the burden of proof on "the proponent of a rule or order."⁵ That burden of proof consists

⁵ 66 Pa. C.S. § 332(a).

of: (1) the burden of persuasion; and (2) the burden of production.⁶ As the Commonwealth Court explained in *Middletown*:

[A]s the moving party here, Librandi bore the burden of proving, by a preponderance of the evidence, that it is entitled to obtain electric utility service from MetEd under the Code. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa. Commw. 218, 578 A.2d 600, 602-03 (Pa. Cmwlt. 1990). The preponderance of the evidence is a more likely than not standard. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 937 A.2d 1040, 1055 n.18 (Pa. 2007). Further, the burden of proof is comprised of two, distinct burdens: the burden of production and the burden of persuasion. *Riedel v. County of Allegheny*, 159 Pa. Commw. 583, 633 A.2d 1325, 1329 n.11 (Pa. Cmwlt. 1993). The burden of persuasion never leaves the proponent of the order, but the burden of production may shift during the proceedings. *Id.* If the proponent of the order makes out its prima facie case, the burden shifts to the opposing party to present evidence that balances the evidence presented, and, if it does so, the moving party has not met its burden and must provide additional evidence to support the claim. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217, 1220 (Pa. Cmwlt. 2001).

23. Here, the Commission erred by evidently placing both the burden of proof and the burden of persuasion on UGI Gas. *See* Order, pp. 7, 22, 29-30. Although the burden of production may have shifted to UGI Gas after the Complainant established a *prima facie* case, at no point under Pennsylvania law could the burden of proof or the burden of persuasion have been placed on the Company. Given that the Commission based its Order on this incorrect understanding of binding legal principles and precedent, the Commission should grant reconsideration and remand the matter so that UGI Gas can present the “comprehensive accounting of all metered charges and credits at issue” that the Commission found was lacking in the record. Order, p. 22. At a minimum,

⁶ *See, e.g., Borough of Middletown v. Pa. PUC*, 301 A.3d 965, 975 (Pa. Cmwlt. 2023) (finding that “the burden of proof is comprised of two, distinct burdens: the burden of production and the burden of persuasion” and that “[t]he burden of persuasion never leaves the proponent of the order, but the burden of production may shift during the proceedings”) (emphasis added) (citations omitted); *Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlt. 2001) (stating that “[o]nce it is determined that the complainant has made out a prima facie case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with the complainant”).

the Commission should clarify its Order to ensure that its findings on the burden of proof and burden of persuasion are consistent with Pennsylvania law.

24. Finally, the Company respectfully requests clarification on whether UGI Gas must seek and obtain a Protective Order to present the required “comprehensive accounting and reconciliation of all usage and payments as in *Jergons*.” *Id.*, p. 22; *see also id.*, p. 2. This presentation would provide details on the other affected customer(s)’ usage and payments. Such privacy concerns were not present in *Jergons*, as the affected customers were a father and daughter.⁷ Nothing in the record here establishes that the Complainant and the other affected customer are relatives.⁸ Thus, UGI Gas would like clarification on how, in a meter mix-up case, the Company should present this accounting for all the affected customers’ usage and payments where the affected customers are not relatives and are not all parties to the litigation, while still protecting the privacy of the affected customers.

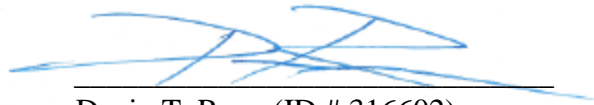
⁷ *See Jergons ID*, pp. 1-3.

⁸ In fact, the Complainant made a comment during her cross-examination of UGI Gas’s witness that “a 90 year old lady lived above [her] for a good portion of the time that year, and then a whole family moved in after she left.” (Tr. 56.)

V. **CONCLUSION**

WHEREFORE, the Pennsylvania Public Utility Commission should grant UGI Utilities, Inc. – Gas Division’s Petition for Reconsideration or Clarification and enter an Order remanding the matter for further proceedings consistent therewith.

Respectfully submitted,



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Dated: March 27, 2026

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