



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 29, 2010

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: *Petition of UGI Utilities, Inc. - Electric Division for Approval of its Energy Efficiency and Conservation Plan*

Docket No. M-2010-2210316

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Office of Trial Staff's (OTS) **Answer to Petition** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Charles Daniel Shields
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #29363

Enclosure

CDS/edc

cc: Company
OCA
OSBA

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Utilities, Inc. - Electric :
Division for Approval of its Energy : **Docket No. M-2010-2210316**
Efficiency and Conservation Plan :

**THE OFFICE OF TRIAL STAFF'S
ANSWER TO PETITION SEEKING
APPROVAL OF ENERGY EFFICIENCY
AND CONSERVATION PLAN**

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The Office of Trial Staff (“OTS”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Chief Prosecutor Johnnie E. Simms and Senior Prosecutor Charles Daniel Shields, pursuant to 52 Pa. Code § 5.61(e), herewith provides this Answer to the above-captioned Petition filed by UGI Utilities, Inc. - Electric (“UGI Electric” or “Company”) seeking approval of an Energy Efficiency and Conservation Plan (“EE&C plan”).

Given that the Commission Secretarial Letter dated December 23, 2009, sent to the Company and other electric distribution companies (“EDCs”) with fewer than 100,000 customers¹ provides that, “[E]ach plan will be referred to an Administrative Law Judge

¹ The Company provides electric distribution, transmission and default service to approximately 62,000 customers. Petition, p. 2. As referenced in the December 23, 2009, Secretarial Letter, EDCs with fewer than 100,000 customer were exempted from the requirement to file an Act 129 EE&C plan. The Secretarial Letter provides guidelines for any of the recipient EDCs, Citizens Electric Company, Pike County Light & Power Company, UGI Utilities Inc. - Electric Division and Wellsboro Electric Company, considering filing such a plan for review by the Commission.

for evidentiary hearings and a recommended decision,” OTS will be filing a Notice of Appearance at this docket to ensure that the proposed plan is properly scrutinized and that a thorough evidentiary record is provided for the assigned Administrative Law Judge and the Commission.

OTS is charged with representing the public interest in Commission proceedings having an impact upon rates and other matters as directed to participate by the Commission. This OTS representation of the public interest includes balancing the interests of both ratepayers and the utilities. OTS provides this instant Answer and intends to be actively involved in this proceeding because the Company’s filed EE&C Plan involves significant costs and includes a recovery mechanism designed to recoup those costs from ratepayers. As such, OTS has and will continue to examine the *submitted EE&C Plan with a focus upon the rate impact of the proposed program costs.* This OTS analysis includes the scrutiny of the claimed level of costs, the proposed allocation of those costs by customer class, and the proposed method of recovery and reconciliation of all such costs.

OTS will also be reviewing the analyses and any proposed changes to the filed Plans contained in the testimonies of the Company and any other active party to this proceeding. Also during the course of the proceeding, OTS Senior Prosecutor Shields will be participating in discussions between and among the Company representatives and those of any other active parties in an attempt to narrow the issues for briefing and to

settle those issues where mutual agreement is possible and such settlement, in whole or part, is in the public interest. However, particularly problematic to any potential settlement of the entire proceeding is the Company's representation at paragraph 26, pages 11-12 of the Petition that states in no uncertain terms that they consider Commission approval of their proposed automatic adjustment clause ("CD Rider") that allows for recovery (at their sole discretion) of lost distribution revenues dollar-for-dollar to be a critical component of their Plan and a primary motivation for the submission of the Plan. *See first summary bullet below.*

The issues currently identified by OTS that require further development and scrutiny during this proceeding can be summarized as follows:

- The Company's proposal to recover lost distribution revenue associated with the reduction in energy consumption as a result of the conservation programs established under the EE&C Plan is an inappropriate guarantee of a certain distribution revenue level and clearly must be stricken as a component of the Plan;²
- The appropriateness of the Company's proposal that relies upon fuel switching to natural gas requires additional analysis and consideration;
- The Company's proposal contains no peak load reduction targets, a characteristic that requires additional analysis and consideration;

² The Company's proposed tariff provision attached to the Plan contemplates recovery of lost distribution revenues through a Conservation Development Rider ("CD Rider"). *See:* pages 43S and 43T of proposed UGI Electric Tariff - Pa. PUC No. 5. Such guaranteed recovery of any distribution revenues that the Company may attribute to customers' conservation measures is contrary to the provisions of Act 129 of 2008, Section 2806.1(k)(2) and Section 2806.1(k)(3), as well as the Commission's directives as set forth in its January 16, 2009, Implementation Order at Docket No. M-2008-2069887, page 36. Both Act 129 and the Implementation Order make it abundantly clear that lost/decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause such as UGI's CD Rider. While noting that Act 129 is not directly applicable to UGI Electric's proposed Plan, the concept that an EDC may only recover any lost distribution revenues due to reduced energy consumption in a Section 1308 base rate case filing remains valid for this or any other jurisdictional EDC regardless of size.

- The Company's proposed level of expenditures to implement the Plan requires further scrutiny and analysis regardless of the fact that the plan cost limits imposed by Act 129 are inapplicable;
- The Company's allocation of costs by customer class must be further investigated to ensure that the class receiving the benefit of a particular plan provision is assessed the related costs to avoid any cost subsidies between and/or among the classes.

OTS has and will continue to scrutinize all aspects of the subject filed Plan. The OTS position on the issues raised in this proceeding will be further refined as a result of the receipt of discovery responses, review of any testimonies distributed by other parties, and the scope and content of answers to cross examination questions provided by witnesses presented at the evidentiary hearings.

Respectfully submitted,



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PA Attorney ID # 29363

Johnnie E. Simms
Chief Prosecutor
PA Attorney ID # 33911

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P.O. Box 3265
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Dated: November 29, 2010

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer to Petition**, dated November 29, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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