

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

June 2, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

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 for filing is the Initial Brief of Office of Consumer Advocate, in the
above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "David T. Evrard".

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870

Enclosures

cc: Honorable Susan D. Colwell

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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 :

INITIAL BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

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I. INTRODUCTION

Act 129 of 2008 imposed requirements on Electric Distribution Companies (EDCs) serving more than 100,000 customers to meet certain statutorily-mandated goals for reducing both energy consumption and peak demand by specific dates.¹ These EDCs were required to file with the Public Utility Commission (Commission) extensive Energy Efficiency & Conservation (EE&C) plans detailing the manner in which the companies plan to achieve the mandated reduction goals. The EE&C plans were required to be filed by July 1, 2009 and the Commission was given 120 days to review and rule on the plans.

In December 2009, as review and decision on the mandated EE&C plans was reaching its conclusion, the Commission issued a Secretarial Letter (December 2009 Secretarial Letter) inviting, but not mandating, EDCs serving fewer than 100,000 customers to submit EE&C plans if these small EDCs “conclude that such measures are in the interests of their customers.” December 2009 Secretarial Letter at 1. Thus any such filing would be done voluntarily. In the Secretarial Letter, the Commission prescribed the necessary elements of a voluntary EE&C plan and specified the various provisions of Act 129 that would be required of such plans and which provisions, while not required, should be looked to for guidance by the small EDCs.

It was in response to the December 2009 Secretarial Letter, that UGI-Electric Utilities, Inc. – Electric Division (UGI-Electric or Company) filed, on November 9, 2010, the first (and thus far only) voluntary EE&C plan with the Commission. UGI-Electric identifies its plan as the “Energy Efficiency and Conservation Plan” (EE&C Plan or Plan).

As the first voluntary plan filed, UGI-Electric raises an issue which the Commission did not face in reviewing the EE&C plans of the larger EDCs. UGI-Electric seeks to recover the

¹ The portions of Act 129 of 2008 relevant to this Brief are codified in Section 2806.1 of the Public Utility Code. 66 Pa.C.S. § 2806.1.

revenue lost as a result of implementation of its Plan and proposes two methods for doing so. Its preferred method is by way of an automatic adjustment charge pursuant to Section 1307 of the Public Utility Code. 66 Pa.C.S. § 1307. As an alternative, the Company proposes that lost revenue could be identified, accrued and tracked as a “regulatory asset” until its next base rate case at which point the amount of the regulatory asset would be included in rates.

The question of recovery of lost revenue was not an issue with the plans of the larger EDCs filing under Act 129 because the statute specifically prohibited any such recovery by way of an automatic adjustment charge and prescribed that the only method of recognizing decreased revenue and reduced energy consumption is by reflecting the reductions as part of the revenue and sales data used to calculate rates in a subsequent base rate case. 66 Pa.C.S. § 2806.1(k)(2) and (3).

Thus the issue of lost revenue recovery related to EE&C plans, whether filed under Act 129 or voluntarily, is a matter of first impression here. As will be more fully set forth below, the Office of Consumer Advocate (OCA) opposes UGI-Electric’s lost revenue claim outright, without regard to the method of recovery.

UGI-Electric’s Plan raises another issue that was not squarely addressed in the cases involving the EE&C plans of the larger EDCs. The issue concerns the inclusion of fuel-switching as a major component of the Plan. Unlike the larger EDCs, UGI-Electric proposes as a key element of its Plan a residential fuel-switching program. Indeed, UGI-Electric projects that on the basis of the Total Resource Cost (TRC) test, the use of which has been mandated by the Commission for the small EDCs, UGI-Electric’s Plan will yield \$15.2 million in net benefits. Plan at 70. Reviewing the net benefits projected for the residential fuel-switching program reveals that UGI-Electric expects \$5.7 million, or more than 37% of the total Plan benefits, to

come from this program. Such heavy reliance on fuel-switching is an issue the Commission has not before faced. As will be discussed more fully below, the OCA has serious concerns regarding the manner in which UGI-Electric proposes to implement its fuel-switching program. A particular concern regarding this aspect of the Company's Plan arises from the fact that the local natural gas distribution company that operates in UGI-Electric's service territory and would reap the increase in gas load resulting from the fuel-switching program is UGI-Electric's sister company, UGI-Penn Natural Gas. Similarly, a UGI-Electric affiliate, Amerigas, sells propane in the UGI-Electric territory. OCA St. No. 1, Exh. GCC-5. Under such circumstances, the Commission must be careful to determine whether the true object of the fuel-switching program is to achieve electric efficiency gains or whether it is to build load for the affiliated gas companies at the expense of electric ratepayers.

In addition to the concerns about lost revenue and fuel-switching, the OCA also makes recommendations for incorporating certain consumer education content into the Plan, for expanding the scope of the compact fluorescent lighting program and for using prescriptive rebates in connection with commercial lighting improvements under the Plan. The OCA submits that the Company's Plan should be approved only if the modifications set forth in this Brief are incorporated into the Plan.

II. HISTORY OF THE PROCEEDING

On November 9, 2010, UGI-Electric voluntarily filed with the Commission its proposed EE&C Plan together with a Petition seeking approval of the Plan. On November 29, 2010, the OCA and the Office of Small Business Advocate (OSBA) each filed a Notice to Intervene and an Answer to UGI-Electric's petition. On the same day, the Commission's Office of Trial Staff (OTS) also filed an Answer to UGI-Electric's petition. A Petition to Intervene was filed by the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) on December 1, 2010.

The matter was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Susan D. Colwell. A prehearing conference was held on January 5, 2011, at which time a procedural schedule was established. The Petition to Intervene of SEF was granted without objection. In accordance with the procedural schedule, on March 17, 2011, the OCA filed the Direct Testimony of its expert witness, Geoffrey C. Crandall.² At the same time, testimony was also filed by OTS, OSBA and SEF. On April 7, 2011, Rebuttal Testimony was filed by UGI-Electric, OSBA and OTS. Surrebuttal Testimony was then filed by OCA, OTS, OSBA and SEF on April 21, 2011. UGI-Electric filed Rejoinder Testimony on April 29, 2011. Evidentiary hearings were held in Harrisburg on May 4, 2011. Pursuant to the procedural schedule, parties' Briefs are to be submitted on June 2, 2011 and Reply Briefs are due on June 14, 2011.

² Mr. Crandall is a principal and Vice President of MSB Energy Associates, Inc. He has more than 35 years of experience in utility regulatory issues, including energy efficiency, conservation and load management resources program design and implementation, resource planning, restructuring, mergers, fuel, purchase power and gas cost recovery and planning analysis, and related issues. Prior to his tenure with MSB, Mr. Crandall served for 15 years on the staff of the Michigan Public Service Commission in various roles of increasing responsibility, including as an analyst in the Electric Division (Rates and Tariff section), Technical Assistant to the Chief of Staff, Supervisor of the Energy Conservation Section (involving residential and commercial energy efficiency programs), and Director of the Industrial, Commercial and Institutional Division (involving the design, funding and implementation of energy efficiency and conservation programs for industrial, commercial and institutional gas and electric customers throughout Michigan).

III. SUMMARY OF ARGUMENT

The OCA commends UGI-Electric for its initiative in presenting the first voluntary EE&C plan. UGI-Electric's Plan contains many features that are being employed by the larger EDCs under Act 129 such as appliance rebates and appliance recycling, a school energy education program and a compact fluorescent bulb campaign. While the OCA recommends modifications to several of these standard features of UGI-Electric's Plan, its most serious concerns center on the two unique aspects of the Plan – the lost revenue recovery and the fuel-switching program. The OCA opposes the lost revenue recovery feature outright and recommends its elimination from the Plan. With respect to fuel-switching, the OCA submits that the program's incentives are set at a level that is higher than necessary in order to induce the degree of fuel-switching that UGI-Electric expects and that the level is inappropriate and unreasonable for electric ratepayers to fund. Setting incentive levels too high runs the risk of engaging in wasteful spending of the Plan's limited resources. Accordingly, the OCA recommends a 50% reduction in the Plan's proposed fuel-switching incentive levels. The OCA also recommends that the fuel-switching program include a requirement that switching customers purchase high efficiency, as opposed to standard efficiency, gas equipment.

Because it opposes or seeks changes to these aspects of the Plan, the OCA recommends that the Commission reject the UGI-Electric Plan as filed and instruct the Company that if it elects to move forward with its Plan that it resubmit a Plan modified in the manner suggested by the OCA in this Brief.

IV. ARGUMENT

A. Burden of Proof/Applicable Legal Standard

In this proceeding, UGI-Electric petitions the Commission for approval of its voluntarily filed EE&C Plan. Thus, it is UGI-Electric that seeks affirmative relief from the Commission. Section 332(a) of the Public Utility Code provides that the proponent of a rule or order before the Commission bears the burden of proof. The Commission has cited Section 332(a) for the proposition that the party seeking affirmative relief from the Commission carries the burden of proof. *Carl A. Nolan v. Pennsylvania Power and Light Company*, 1996 Pa. PUC LEXIS 127. Therefore, as the party requesting affirmative relief in this proceeding, it is UGI-Electric that bears the burden of proof.

Going further, Pennsylvania courts have noted that the burden of proof is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa.Super. 178, 754 A.2d 1283 (2000). While the burden of production can shift between two parties during the course of a case, the burden of persuasion, typically imposed on the party seeking the affirmative relief, remains with the party on whom it is originally cast. *Riedel v. County of Allegheny*, 159 Pa.Cmwlth. 583; 591, 633 A.2d 1325; 1328 n. 11 (1993). As the party seeking affirmative relief, UGI-Electric bears both the initial burden of production *and* the complete burden of persuasion.

B. Filed Plan

1. Position Regarding Approval of Plan as Filed

For reasons that will be evident throughout this brief, the OCA opposes approval of UGI-Electric's EE&C Plan as filed.

2. Filed Plan's Adherence to Commission's December 23, 2009 Secretarial Letter Guidelines

The December 2009 Secretarial Letter states that voluntary EE&C Plans must contain at least the following six elements:

- (1) A detailed plan with a description of EE&C measures to be offered;
- (2) Sufficient supporting documentation and verified statements or testimony or both;
- (3) Proposed energy consumption or peak demand reduction objectives or both, with proposed dates the objectives are to be met;
- (4) A budget showing total planned expenditures by program and customer class;
- (5) Tariffs and a section 1307 cost recovery mechanism; and
- (6) A description of the method for monitoring and verifying plan results.

December 2009 Secretarial Letter at 1.

Based on its review of the Plan, the OCA submits that UGI-Electric has included these six elements, but the OCA disagrees with certain elements and design details of the Plan.

Other elements required by the December 2009 Secretarial Letter include:

- The evaluation, measurement and verification of energy savings are to be performed using the Commission's Technical Reference Manual (TRM);
- The Act 129-prescribed Total Resource Cost (TRC) Test must be used to determine whether the EE&C plan is cost-effective;
- An annual report must be filed with the Commission detailing the results of the EE&C plan and its cost-effectiveness.
- The EDC must justify the level of expenditures it proposes whether they meet the Act 129 cost limits or not;
- The costs of the plan must be allocated to the customer rate class that receives the benefit of any particular EE&C measure; and

- The Section 1307 cost recovery mechanism must be subject to annual review and reconciliation.

December 2009 Secretarial Letter at 1-2.

With one caveat, the OCA submits that UGI-Electric's Plan meets each of these requirements. The caveat concerns the level of Plan expenditures. As will be discussed in section C. 4. below, the OCA does not agree with the level of planned expenditures as it exceeds the 2% cap applicable to the larger EDCs under Act 129 and UGI-Electric has not provided sufficient justification for needing to exceed that level.

3. Filed Plan's Cost Effectiveness

Act 129 requires that EDCs demonstrate the cost-effectiveness of their EE&C plans by employing the TRC Test. 66 Pa.C.S. § 2806.1(b)(i)(I). As indicated above, the December 2009 Secretarial Letter extends this requirement to small EDCs that submit voluntary EE&C plans. Pursuant to the definition of "Total resource cost test" in Act 129, the test is met if, over the effective life of an EE&C plan, the net present value of the avoided cost of supplying electricity is greater than the net present value cost of the energy efficiency conservation measures. 66 Pa.C.S. § 2806.1(m). Put in terms of costs and benefits, the benefits would be the avoided cost of supplying electricity and the costs would be the cost of the energy conservation measures. Therefore the TRC test is met when the benefits exceed the costs, or when the benefit-to-cost (B/C) ratio exceeds 1.0.

In Section 3 of its Plan, UGI-Electric provides a Program Efficiency Analysis Summary which shows that its programs designed for residential customers have a TRC B/C ratio of 2.5. The programs geared to commercial and industrial customers have a TRC B/C of 1.49. The B/C ratio for the Company's entire portfolio of programs is 2.04. Plan at 70.

While the OCA's expert witness in this case has made recommendations that in his view would enhance the cost-effectiveness of UGI-Electric's Plan, the OCA does not dispute that on a strictly mechanical TRC B/C ratio basis, the Plan is cost-effective. That said, however, the OCA notes that any recovery of lost revenue adds costs to the Plan that are not reflected in the TRC. Given the OCA's recommendations and the Company's lost revenue claim, the fact alone that the Plan passes the TRC cannot support approval.

4. Filed Plan's Voluntary Nature/Company's Ability to Withdraw Plan If Commission Removes Revenue Recovery Mechanism

The OCA understands that UGI-Electric has filed its Plan voluntarily, in response to the Commission's December 2009 Secretarial Letter. Because the Plan has been filed on that basis, the OCA also understands that the Company may withdraw its Plan.

UGI-Electric has stressed both in its Petition and in testimony the criticality of the lost revenue recovery claim to its case. Petition at 12; UGI-Electric St. No. 3 at 3-4; UGI-Electric St. No. 3R at 2-3; UGI-Electric St. No. 3RJ at 6-7. In its Rejoinder Testimony the Company posits that a Commission rejection of the lost revenue claim would cause it either to withdraw its Plan altogether or to go forward with its Plan with the expectation that the timing of its next base rate case would be accelerated because of the rejection of the lost revenue claim. UGI-Electric St. No. 3RJ at 7. The OCA submits that the Commission should not be deterred by the Company's self-serving portrayal of its options. Rather, the Commission's objective should be to ensure that a sound EE&C plan goes forward and that customer dollars are spent in the most cost-effective manner.

C. Proposed Modifications to Filed Plan

1. Elimination of Any Revenue Recovery Mechanism

a. Introduction

UGI-Electric proposes employing two separate rate mechanisms in connection with its EE&C Plan. UGI-Electric St. No. 3 at 3. For purposes of recovering the costs of development and implementation of the Plan, the Company proposes using a reconcilable automatic adjustment charge under Section 1307 of the Public Utility Code. The Company refers to this charge as the Energy Efficiency and Conservation Rider (EEC Rider). As will be discussed below, the OCA does not object to the EEC Rider itself.

The Company also proposes to recover lost revenues that result from implementation of the Plan through a separate automatic adjustment charge referred to as the Conservation Development Rider (CD Rider). For reasons that will be discussed below, the OCA opposes the CD Rider and urges that it be rejected.

b. Plan Cost Recovery

Act 129 specifically authorizes EDCs to recover all reasonable and prudent costs incurred in the provision or management of an EE&C plan through a reconcilable adjustment clause under Section 1307. 66 Pa.C.S. § 2806.1(k)(1). Following the Act's guidance, the Commission, in its December 2009 Secretarial Letter, stated that it would permit recovery of "all reasonable and prudent costs incurred in implementing and managing a voluntary EE&C plan through a reconcilable adjustment clause under Section 1307." December 2009 Secretarial Letter at 2. Accordingly, the Secretarial Letter required that any voluntary plan must contain a Section 1307 recovery mechanism that will be subject to an annual review and reconciliation. *Id.*

The EEC Rider was filed in response to those directives and UGI-Electric proposes that the Rider be reconciled annually. UGI St. No. 3 at 9-10. UGI-Electric has therefore conformed its request for Plan cost recovery with the requirements imposed by the Commission and with one caveat, the OCA does not object to this feature of the Company's Plan. That caveat, which

will be discussed further below, concerns the total amount of costs to be recovered under the EEC Rider. The OCA submits that the total costs of the Plan should be capped at 2% of the Company's annual revenues.

c. Lost Revenue

As mentioned above, UGI-Electric's original proposal for recovering lost revenue was through the CD Rider, a Section 1307 automatic adjustment clause. In its Rebuttal Testimony, however, the Company noted that an alternative to the use of an automatic adjustment charge would be to treat the lost revenues as a regulatory asset, recoverable in its next base rate proceeding. In its testimony, UGI-Electric states, "UGI-Electric would be willing to accept an appropriately designed regulatory asset for lost revenue recovery in lieu of the CD Rider." UGI-Electric St. 3R at 7.

The OCA opposes the recovery of lost revenue regardless of the method employed to collect it. In Act 129, the General Assembly spoke directly to the issue of lost or "decreased" revenue. Section 2806.1(k) provides:

- (2) Except as set forth in paragraph (3), 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.
- (3) Decreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under section 1308....

66 Pa.C.S. § 2806.1(k)(2) and (3).

Thus the Act expressly prohibits the recovery of decreased revenue resulting from reduced energy consumption associated with implementation of energy efficiency and conservation programs through the use of a reconcilable automatic adjustment clause. The Act provides that decreased revenue from reduced consumption, if it is to be recovered, must be

reflected in the revenue and sales data used to calculate rates in a future base rate case. In other words, decreased revenues are to be recognized on a prospective basis only by being accounted for in the revenue projections filed in a future rate case. The General Assembly has thus given strong public policy guidance with regard to this issue. Reduced revenue may not be recovered by means of a surcharge, only as part of a base rate case and then only by reflecting that reduction in the prospective revenue and sales data submitted for the purpose of determining the new rates.

UGI-Electric seeks to circumvent the General Assembly's guidance by asserting that because it is a small electric distribution company not covered by Act 129, the provisions of the Act regarding lost revenue recovery do not apply to it. Even if, for the sake of argument, this were so, allowing UGI-Electric its lost revenue claim would mean that the Commission would engage in impermissible single-issue ratemaking. OSBA witness Knecht describes this as follows:

Under current rate design principles in Pennsylvania, load changes related to conservation, weather, or economic fluctuations are not subject to automatic adjustment mechanisms. Adopting such a mechanism that applies to only one type of conservation program (but excludes all other conservation programs, including those undertaken by customers themselves) is inconsistent and represents single-issue ratemaking. For example, any load growth experienced by UGI-Electric related to new customers, or to existing customers, is not subject to a similar reconciliation mechanism. To the extent that UGI-Electric desires to adopt a rate "decoupling" mechanism to reduce the impact of load fluctuations on its bottom line, it should make such a proposal in the context of a base rates proceeding. (Footnote omitted)

OSBA St. No. 1 at 10.

In *Pennsylvania Indus. Energy Coalition v. Pennsylvania Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Commw. Ct. 1995) (PIEC), the Commonwealth Court stated that "Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a

matter that is normally considered in a base rate case.” PIEC at 1350. Revenues, sales and usage are the very types of items that are normally considered in a base rate case. Additionally, the General Assembly specifically recognized this point when it directed that decreased revenues associated with energy efficiency and conservation plans are to be prospectively reflected in a future distribution base rate case. Therefore, the attempt to single out lost revenue for recovery by way of a surcharge or regulatory asset constitutes prohibited single-issue ratemaking.³

An additional problem with the Company’s lost revenue recovery proposal is that it is highly speculative in nature and therefore particularly ill-suited for the purpose of ratemaking. Lost revenues attributable to the implementation of UGI-Electric’s EE&C Plan are not determined on the basis of measurement and verification, but rather on the basis of “deemed savings” from the Commission’s Technical Reference Manual (TRM). Plan at 77; UGI-Electric St. No. 3 at 12. Moreover, the impact of the lost revenues on UGI-Electric’s earnings is uncertain at best. The OCA submits that to set rates on so speculative a basis cannot yield just and reasonable rates as required by Section 1301.

³ In its Rebuttal Testimony, UGI-Electric cites the Commission’s 1993 investigation order on demand side management, the order which gave rise to the PIEC appeal. *Investigation into Demand Side Management By Electric Utilities -- Uniform Cost Recovery Mechanism*, 80 Pa. P.U.C. 608 (1993). UGI-Electric cites the order as precedent for the Commission granting regulatory asset treatment for the recovery of lost revenue. In that proceeding, the Commission permitted electric utilities to accrue in a balancing account as a regulatory asset, the lost revenues resulting from the implementation of demand side management programs. The balancing account would earn interest at the rate used for their accrual of Allowance for Funds Used During Construction and recovery would be deferred until the utility’s next base rate case. On appeal, issues concerning lost revenue recovery were found to be not ripe for review and were remanded to the Commission. PIEC at 1352-1353. Thus, the Court did not consider this issue. In addition, this was an investigation order and no further cases on the matter were taken up.

Even if allowing recovery of lost revenues as a regulatory asset in a base rate proceeding may have been arguably permissible in 1993, prior to the pronouncement of any policy on the subject by the General Assembly, such is no longer the case. The express direction of the legislature regarding the means of recovery of lost revenue embodied in Section 2806.1(k) of the Public Utility Code must supersede any earlier decision of the Commission. The General Assembly, while allowing for recovery of lost revenue in a base rate proceeding (Section 2806.1(k)(3)) via the sales and revenue data used to determine rates, provides no authorization for the accrual of a regulatory asset in the period leading up to the base rate proceeding. In the face of an express statement of policy to the contrary by the General Assembly, the precedential value of the 1993 DSM Order is negated.

OCA witness Crandall speaks specifically to the speculative nature of UGI-Electric's

proposal related to lost revenue:

The essence of the proposal is that UGI-Electric be allowed to link its lost revenue to a "deemed savings" value. The "deemed savings" will be established in the course of developing and adjusting the statewide Technical Reference Manual for Pennsylvania....

UGI-Electric is proposing the use of a coarse indicator of a "deemed savings" value that will be developed and modified from time to time for statewide use in Pennsylvania in conjunction with the Technical Reference Manual. The use of statewide "deemed savings" values for purposes of this lost revenue mechanism is not appropriate. The "deemed savings" value to be developed using information from all over the state may be dissimilar to UGI-Electric service territory and therefore not transferable. Given the relatively small size of the energy efficiency program that UGI-Electric is proposing and the relatively high costs of developing accurate quantification of any net lost revenues to UGI-Electric revenues (including the necessity to include newly induced central air conditioning by the program) this is not a reasonable or prudent proposal.

OCA St. No. 1 at 22-24.

Again in Surrebuttal Testimony, Mr. Crandall states:

Additionally, this approach would involve a relatively small energy efficiency program which means that the estimation and quantification of energy savings would not be subject to a rigorous evaluation, measurement and verification analysis. The derived lost revenue will most likely be based on "deemed" energy saving values as referenced in the rebuttal testimony (See Witness McAllister Rebuttal page 9 line 4). The proposal clearly suggests a process which is unable to precisely quantify energy savings attributable to the Plan. This proposed approach would lack accuracy, verifiability and introduces other problems. Specifically, UGI-Electric is seeking permission to estimate savings, derive lost revenue values and then apply an interest rate to those theoretical lost revenues. Once estimated and authorized, the applicant would charge all those costs plus interest to customers disaggregated by rate class over a prospective three year timeframe. The applicant has not included a methodology or means to track the corresponding expenses that have been avoided as a result of energy efficiency programs. In other words, if the programs resulted in resource savings that offset a considerable amount of costs, i.e., expensive power supply costs or other expensive (peak sensitive) operating costs, those would not be given credit or included in the calculation of the lost revenue recovery as proposed.

OCA St. No. 1-S at 16.

Indeed, UGI-Electric proposes to calculate the projected revenue reductions using the “deemed savings” for each customer class. UGI-Electric St. No. 3 at 12, 14. For the reasons stated in his testimony, Mr. Crandall argues that the “deemed savings” derived from the TRM are a coarse indicator of the actual energy consumption reductions that may be experienced in UGI-Electric’s territory. Mr. Crandall also indicates that the cost of developing a more accurate quantification of UGI-Electric’s lost revenues may not be warranted given the size of UGI-Electric’s program. Therefore the likelihood of having a more accurate measure to rely upon is small.

Further, the OCA notes that nowhere in the TRM is there any indication that the energy savings it identifies are to be used for ratemaking purposes such as lost revenue recovery.

Section 1.1(captioned, “Purpose”) of the current TRM states:

The TRM was developed for the purpose of *estimating* annual electric energy savings and coincident peak demand savings for a selection of energy efficient technologies and measures...

Resource savings to be measured include electric energy (kWh) and electric capacity (kW) savings. The algorithms in this document focus on the determination of the per unit savings for the energy efficiency and demand response measures. The algorithms and methodologies set forth in this document must be used to determine EDC reported gross savings and evaluation measurement and verification (EM&V) verified savings, unless an alternative measurement approach or custom measure protocols is submitted and approved for use. (Emphasis added)

TRM 2011 at 1.

From this passage, it is clear that the TRM is intended as a vehicle to estimate the energy savings from implementation of various energy efficiency measures. In addition, the algorithms and methodologies set forth in the TRM are to be used by EDCs to measure and verify savings as part of an evaluation process to determine if the measures and programs are working as projected. There is no mention anywhere in the TRM that the energy savings it identifies are to

be used for the purpose of setting rates for the EDCs. This is not its purpose and any reliance on it for such a purpose is misplaced.

One justification UGI-Electric relies upon in seeking lost revenue recovery is that failure to secure such recovery would likely lead to UGI-Electric filing a base rate case much sooner than it otherwise would. UGI-Electric St. No. 3 at 3-4. The Surrebuttal Testimony of OSBA witness Knecht examines this claim:

Q. At page 3 of his rebuttal testimony, Mr. McAllister argues that rejecting the CDR would be bad regulatory policy, as it would push UGI-Electric closer to filing a base rate case. Do you agree with his conclusion?

A. No, I do not. First, it is not obvious that a rate case for UGI-Electric is imminent, or would become imminent as a result of adopting the proposed EE&C Plan. To my knowledge, UGI-Electric has not filed a base rate case since 1995 (adjudicated in 1996), at Docket No. R-00953534. However, according to its March 31, 2011 Financial Report to the Commission, attached to this testimony as Exhibit IEC-S1, the Company's reported return on common equity was 13.08 percent for the 12 months ending December 31, 2010, a value well in excess of recent return on equity awards from this Commission or from other U.S. regulatory authorities. In addition, the \$308,000 first year deemed reduction in revenues cited by Mr. McAllister (adjusted for income tax effects) would reduce that equity rate of return by no more than 40 to 50 basis points. Even after three years, the deemed annual revenue reduction of \$1.0 million would reduce UGI-Electric's return on equity by about 144 basis points. All other factors being equal, the effects of the EE&C Plan would leave UGI-Electric's return on equity above 11 percent.

Moreover, all other factors are not necessarily equal. Load growth or cost reductions unrelated to the EE&C Plan could produce increases in net income which offset the effect of deemed revenue losses from the EE&C Plan. (Footnote omitted)

OSBA St. No. 3 at 2 (corrected).

For its part, the OCA concurs with Mr. Knecht's analysis and submits that there is no certainty that denial of recovery of lost revenue in this proceeding will advance the timing of UGI-Electric's next rate case. The Company's contention otherwise is therefore open to question.

Further, it must be emphasized that under the Plan as proposed, with its heavy reliance on fuel-switching, the erosion of revenue to UGI-Electric will not mean the erosion of revenue to UGI as a corporate entity. OCA witness Crandall addresses this point specifically:

Q. Does UGI-Electric have a strategy to mitigate revenue erosion resulting from such a fuel substitution initiative?

- A. Yes, if UGI-Electric receives compensation for lost revenues in a decoupling mechanism as it requested, UGI-Electric will not experience revenue loss resulting from the fuel substitution technologies. The net result would be:
- a. UGI-Electric would pay a large (more than likely incremental cost) incentive for customers to switch to natural gas or propane which would be recovered from electric ratepayers.
 - b. UGI-Electric would receive a lost revenue compensation to make it whole for reduced sales due to fuel switching, again paid for by electric ratepayers.
 - c. UGI Penn Natural Gas would increase revenues for gas delivery for all natural gas delivered to UGI-Electric customers who switched to natural gas. UGI Penn Natural Gas' earnings are a function of its delivery volumes which would increase.
 - d. UGI Energy Services [UGI-Electric's affiliated natural gas supplier] and Amerigas would supply at least some of the switched loads. These would be further profit centers resulting from the fuel switching program.
 - e. UGI's holding company would suffer no loss, and as a result of UGI-Electric's loss revenue compensator plus the earnings of UGI-Electric's affiliates would probably gain.

OCA St. No. 1 at 13. The decreased revenues experienced by UGI-Electric are thus likely to be recouped in some measure through revenue increases to other UGI affiliates.

In sum, the OCA submits that UGI-Electric's request to recover lost revenues that result from implementing its EE&C Plan must be denied. The request is contrary to the express public policy of the Commonwealth, it would result in impermissible single-issue ratemaking, it would produce unjust and unreasonable rates because it is based on speculative estimates of energy savings, it would rely upon a document not intended for ratemaking purposes, its denial would not necessarily lead to an earlier base rate case for UGI-Electric and the revenue reductions for

UGI-Electric are likely to be offset by revenue increases for other UGI affiliates. For all of these reasons, the request should be rejected.

2. Elimination or Modification to Fuel Switching Program

It must be made clear at the outset that the OCA does not object to the inclusion of an appropriately designed and reasonably targeted fuel switching program as a part of UGI-Electric's overall EE&C Plan. Rather the OCA's concerns relate to the manner in which UGI-Electric proposes to implement its fuel switching programs. Fuel-switching should not be designed or targeted to build natural gas load at electric ratepayers' expense and, if done, it should ensure efficiency in all aspects of the specific targeted application.

In its Plan, UGI-Electric includes two fuel switching programs, one targeted to residential customers (Plan at 57) and the other targeted to commercial and industrial customers (Plan at 64). The OCA's concerns relate exclusively to the residential fuel switching program. This program seeks to promote fuel switching for three home-related functions -- water heating, space heating and clothes drying. The program will incentivize a switch from electric appliances for these functions to appliances fueled by either natural gas or propane.⁴ Plan at 57. According to the Plan, in order to "make the program affordable to customers," the incentive offered for switching water heaters or dryers is equal to 100% of the anticipated incremental cost to make the switch. Plan at 57. For a space heating fuel-switch, the incentive offered is 75% of the anticipated incremental cost.

a. Level of Incentives

One of the OCA's principal concerns with the program has to do with the level of incentives offered. OCA witness Crandall states, "Currently, the rebates appear much larger than needed to induce customers to switch to a less costly fuel source." OCA St. No. 1 at 17. The

⁴ Natural gas and propane are the only alternatives to electricity for which an incentive is offered.

OCA's concern is that such generous incentivization may build load for UGI-Electric's natural gas and propane affiliates at UGI-Electric ratepayers' expense. As noted above, the OCA can support reasonable fuel-switching initiatives, but a program that over incentivizes the switch of fuel, and consequently builds natural gas load, is not a reasonable approach. To address the OCA's concerns about the too-generous level of fuel-switching incentives, its witness Mr. Crandall recommends that UGI-Electric reduce its fuel-switching incentive levels by 50%. OCA St. No. 1 at 20.

As an initial matter, the OCA notes that included within the incentive for each type of appliance switch (water heating, clothes drying, space heating), are certain infrastructure costs. For clothes dryers, for instance, the Company includes \$150 for the cost of piping. Tr. at 67. More significantly, with respect to a space heating conversion to natural gas (or propane), the incentive includes \$1500 to cover the cost of bringing gas from the main in the street to the house. OCA St. No. 1, Exh. GCC-3; Tr. at 68. Thus, for space heating, UGI-Electric is not targeting homes where gas is being used for other purposes, but will seek to convert a home where gas is available in the neighborhood. The OCA submits that incorporating these infrastructure costs into the incentives is neither appropriate nor necessary. Any switch to natural gas will benefit the eventual natural gas supplier in the form of increasing sales and it should benefit the customer on an overall basis. Therefore, it is inappropriate to ask the customers of UGI-Electric to pay for gas infrastructure costs that ultimately redound to the benefit of the natural gas supplier. Further, paying for infrastructure costs should not be necessary when one considers that in making a switch from electric to gas, the customer will realize operational savings over the life of the new appliance. OCA witness Crandall explained it as follows:

Including infrastructure related costs such as piping and gas line connections would be inappropriate to include in customer incentives and EE&C Plan costs. Given that the customer will be saving money on operating the device since natural gas is less expensive than electricity, it should not be necessary for the other electric customers to pay 100% of the incremental cost to achieve significant fuel switching. Paying less than 100% would still result in participants benefiting from the switch, and it would cost non-participating customers less while still meeting efficiency goals.

OCA St. No. 1 at 11. The portion of residential fuel switching incentives that are intended to cover the cost of service line installation, piping and gas connections should be eliminated.

Even if the infrastructure costs were removed from the incentive payments, the OCA submits that the incentive payments remain too high. Here, UGI-Electric and the OCA fundamentally disagree on the level of incentive needed to induce customers to participate in fuel switching. OCA witness Crandall states as follows:

Generally speaking, a 100% rebate is not needed in order to induce customers to participate, especially when programs are new and when participation targets are quite low. There is a continuum of customers from those that would have participated without incentives (free riders) to those that will never participate. Offering a lower rebate will adequately incent those customers that are more likely to participate. If the savings goals can be accomplished with the lower rebates, that money can be used to expand other programs to increase the savings levels... UGI-Electric recognizes these facts in the design of its lighting and other programs. Applying those principles to the fuel switching program would make it a more cost effective program, and therefore the funds could be used to expand other programs.

OCA St. No. 1 at 19-20.

In Rebuttal Testimony, UGI-Electric witness Raab answers offers three reasons for the high incentive level. First, he states that the Company knows that the likelihood that a customer who does not already have natural gas service will convert from electric to gas is small because of the large investment required. Hence, Mr. Raab implies that a higher incentive will be required to induce participation. Second, UGI-Electric wants to minimize the percentage of free-riders in the program by offering a higher incentive. According to Mr. Raab, if customers were

willing to make the investments to participate in the fuel switching program with a minimal incentive payment, they would likely make the investments on their own. By providing a larger incentive, Mr. Raab posits that all customers who would like to participate will do so, program participation levels will be high and the percentage of free-riders minimized. Third, Mr. Raab asserts that the fuel switching program is brand new and UGI-Electric believes that a successful rollout of the program is important. The best way to ensure that success, according to Mr. Raab, is by offering large incentives. Mr. Raab notes that if the incentives turn out to be larger than necessary, they can be reduced as more experience is gained with the program. UGI-Electric St. No. 2R at 21.

In response to the first point that Mr. Raab makes, UGI-Electric states that it “knows” that customers who do not already have natural gas are unlikely to convert from electric to gas. In its Rejoinder Testimony, UGI-Electric adds that it knows this because “it rarely occurs in practice.” UGI-Electric St. No. 2RJ at 10. Thus UGI-Electric provides no evidence or documentation to support its supposition and the probative value of it must be open to question. Further, the Company uses this *a priori* “knowledge” to conclude that incentives at the highest end of a range are necessary, rather than starting out conservatively (and thereby being most judicious with ratepayers’ money) and testing whether its *a priori* assumption is in fact correct. It should not be overlooked that the consumption reductions UGI-Electric seeks in its Plan are not mandatory. That fact in itself should argue for taking a more conservative approach to setting fuel-switching incentive levels.

OCA witness Crandall challenges Mr. Raab’s second point regarding minimizing the percentage of free-riders. Mr. Crandall states:

Mr. Raab’s assertion is premised on the notion that the number of free riders is not reduced, but by paying excessively generous incentives (above the

incremental cost), participation levels will be so high as to reduce the percentage of participants that are free riders. Rather than to design the program to reduce the number of free riders, Mr. Raab proposes to provide them an even sweeter deal (the free riders will cost electric ratepayers paying for the incentives more) to increase the participation and reduce the free rider percentage. That is inappropriate.

OCA St. No. 1-S at 9-10. As Mr. Crandall points out, there appears to be something illogical or at least counterintuitive about the way that UGI-Electric proposes to address free-ridership concerns.

Mr. Crandall also points out that UGI-Electric's approach to minimizing the free-ridership percentage does not square with UGI-Electric's expectations for uptake of its space heat fuel switching program. The Company's Plan indicates that UGI-Electric expects 60 customers to participate in the space heat switching program for each of the three years of the Plan. Plan at 62. Sixty customers represents 0.59% of the Company's electric space heating customers. OCA St. No. 1, Exh. GCC-7.⁵ Based on this fact, Mr. Crandall testifies:

Under UGI-Electric's plan, the space heat fuel switching program is not approaching saturation – it in fact attracts few takers. The same number of takers are likely to be free riders whether the incentives are high or low – by definition, a free rider is someone who was going to install the measure anyway without incentive. The difference is that a high incentive means that the free rider will be paid more to do what he was going to do without the incentive.

OCA St. No. 1-S at 10.

Mr. Crandall notes further that by starting off with high incentives, free riders and other easily persuaded customers will be paid more than needed to induce them to participate in the fuel switching program. He states that it would be more logical to start with lower incentives to attract as many free riders and other easily persuaded customers at a low cost when the fuel

⁵ OCA's Exh. GCC-7 shows that the expected participation levels for the water heating and clothes drying components of the program are also low relative to the number of eligible customers – 2.98% for water heating and 0.24% for clothes drying. Given such modest levels of anticipated participation, the OCA submits that these levels could be reached with lower incentive payments.

switching targets are as low as UGI-Electric anticipates and then increase them over time as needed to meet the fuel switching goals. OCA St. No. 1-S at 10.

With regard to Mr. Raab's third point about wanting to ensure a successful rollout of the program, Mr. Crandall takes issue with this as well. He states:

Starting with a high incentive and reducing it if it turns out to be more than necessary increases the cost of the energy saved by the program. From a customer relations standpoint, it is generally more difficult to take away a benefit than it is to increase one. Reducing an existing incentive may adversely impact the long run success of the program, relative to gradual increases in the incentives as necessary.

OCA St. No. 1-S at 11.

Each of the reasons offered by UGI-Electric for setting fuel-switching incentives at the high level the Company has proposed do not bear analysis and this is further reason the level of incentives should be reduced as recommended by OCA witness Crandall.

Further evidence of over-incentivizing the space heat fuel-switching component of the program was brought out at the evidentiary hearing. UGI-Electric's proposed incentive to a customer who switches from an electric space heating system to a natural gas or propane system is \$4,850. Plan at 60. The Company arrived at this figure by combining the estimated average cost of installing a gas service line from the street -- \$1,500 -- with the average cost of a standard efficiency natural gas furnace -- \$3,350. OCA St. No. 1, Exh. GCC-3; Tr. at 63. While the Company employed its estimate of the average cost of a service line and the average cost of a new gas furnace to determine its incentive level, it also estimated the maximum cost for a service line and the maximum cost for a gas furnace. According to the Company's estimates, a customer incurring these maximum costs would face an incremental cost of making the conversion of \$6,500. UGI-Electric St. No. 2RJ at 9. Whether by coincidence or not, the proposed incentive of \$4,850 happens to be exactly 75% of the estimated maximum cost of making the conversion.

This is important because, as noted above, UGI-Electric's Plan provides that the space heat fuel-switching incentive is to equal 75% of the anticipated incremental cost of making the fuel conversion. Plan at 57. The level of the incentive, therefore, represents the stated target level (75%) of the estimated maximum cost to convert. Tr. at 65-66. Logically then, any customer whose cost of making the conversion is less than the estimated maximum is being over-incentivized by the Company's own terms.

The OCA questioned UGI-Electric witness Raab on this point at the evidentiary hearing:

Q. By designing an incentive structure offering 75 percent of the incremental cost based on an analysis of the conversion that costs the customer – the conversion that costs the customer the most to make, would you agree that offering the same incentive amount to a lower cost conversion would result in over-incentivizing the lower cost conversion?

A. It's certainly possible....

Tr. at 73.

Q. So it would be true that as long as the incremental cost for the conversion was less than the \$6,500 that's on page 9 there, offering a fixed \$4,850 incentive, would result in providing more than 75% of the incremental cost?

A. Yes, there's no question about it....

Tr. at 73-74.

If, as UGI-Electric has assumed, there is a range of potential costs associated with making a space heating conversion from electricity to natural gas, then certainly not every customer, and perhaps only a small number of customers, will face the maximum cost to convert. The OCA therefore submits that UGI-Electric's stated incentive of \$4,850 has the very real potential of over-incentivizing many of the customers who elect to participate in this component of the fuel-switching program.

b. Requirement for High Efficiency Replacement Equipment

Another feature of the residential fuel-switching program of concern to the OCA is the lack of a requirement for converting to high efficiency gas appliances. The program assumes that the replacement equipment will be standard efficiency equipment. OCA St. No. 1, Exh. GCC-6. OCA witness Crandall criticized this approach in his testimony:

This unnecessarily increases energy consumption and costs. It contributes to the impression that the proposed fuel switching program is intended to build gas load and increase company revenues rather than to save energy.

OCA St. No. 1 at 16. Accordingly, Mr. Crandall recommended that the natural gas and propane equipment installed under the residential fuel-switching program should be high efficiency equipment, if any incentive is provided.

In its Rebuttal Testimony, UGI-Electric took issue with Mr. Crandall, thinking that his recommendation was to increase the amount of the incentives to enable switching customers to afford the more expensive high efficiency equipment. The Company properly noted that increasing the incentives for this purpose would amount to a subsidy from UGI's electric customers to the conservation and energy efficiency activities of the switch customer's eventual gas provider. UGI St. No. 2R at 23. The OCA agrees with the Company that such a subsidy would be improper. However, UGI-Electric misunderstood Mr. Crandall's recommendation. As Mr. Crandall explained:

Mr. Raab argues that requiring the electric customers to pay for gas customers to install high efficiency gas furnaces would be an inappropriate cross subsidy. I agree, but that is not what I was suggesting. My testimony stated that "natural gas and propane equipment installed under the fuel switching programs should be high efficiency equipment, if any incentive is to be provided." (page 17, lines 19-20) Mr. Raab did not understand my intent, which was to establish a condition to receive the electric fuel switching incentive subject to the condition that the gas equipment installed was high efficiency. I was not suggesting that the electric customers pay an extra incentive for efficient gas equipment. Rather I was suggesting that the installation of efficient gas equipment by the customer (with the help of existing gas company programs, if applicable) would be an eligibility

criterion (condition) that would have to be met in order to qualify to receive the fuel switching incentive.

OCA St. No. 1-S at 13. Thus Mr. Crandall's recommendation was only that the use of high efficiency equipment should be a condition of receiving the incentive.

In this regard, UGI-Electric makes much of its intention to follow a "full fuel cycle" approach to energy efficiency. UGI St. No. 2R at 14-17. The OCA observes that while mandating a switch to high efficiency gas appliances does not fall within the "full fuel cycle" analysis, it certainly would be consistent with the spirit of such an analysis. If UGI-Electric indeed has a commitment to an across-the-spectrum reduction in energy consumption, it should evidence that commitment by requiring the higher efficiency appliances.

Additionally, the OCA would note that in the Commission's recent Tentative Order regarding *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions* (2011 TRC Order)⁶, in discussing the matter of the efficiency of appliances involved in a fuel-switching program, the Commission indicated that its proposed resolution of the issue is that new equipment installed to replace electric equipment should be high efficiency equipment. 2011 TRC Order at 20. In discussing this proposed resolution, the Commission stated, "Act 129 encourages the most efficient use of electricity, and it would appear to be appropriate to encourage the most efficient use of natural gas or other fuels." *Id.*

The OCA submits that reduction in energy consumption is certainly the spirit of Act 129 and it is therefore appropriate for the Commission to direct UGI-Electric that installation of high-efficiency gas appliances should be a condition of receiving a fuel-switching incentive.

c. Fuel-Switching for Low-Income Customers

⁶ Issued at Docket No. M-2009-2108601, Order entered May 6, 2011.

Another matter of concern regarding UGI-Electric's residential fuel-switching program is its inclusion of incentives for low-income customers to switch to propane, an unregulated fuel source. According to its Plan, UGI-Electric's fuel-switching program is available to all residential customers, including low-income customers and incentives are offered to customers to switch to appliances (for space heating, water heating and clothes drying) that use either natural gas or propane. Plan at 57-58. The OCA is opposed to including an incentive for low-income customers to switch to an unregulated fuel such as propane. The loss of consumer protections available under the Public Utility Code that would result if a low-income customer switched from an electric space heating system to one fueled by propane is of serious concern. The OCA submits that this aspect of UGI-Electric's Plan is ill-advised and it urges the Commission to direct UGI-Electric to remove the incentive for low-income customers to convert to propane.

d. Conclusion

In conclusion, with respect to the residential fuel-switching program, the OCA recommends as follows:

- That all natural gas infrastructure costs be removed from the fuel-switching incentive payments;
- That the proposed fuel-switching incentive payments be reduced by 50%;
- That the incentive for low-income customers to switch to propane be eliminated from the program.

3. Inclusion of Peak Load Reduction Targets

The December 2009 Secretarial Letter lists six things which any voluntary EE&C plan must contain. The list includes, "(3) proposed energy consumption or peak demand reduction objectives or both, with proposed dates the objectives are to be met". Thus the Commission has

given the small EDCs the option of including peak demand reduction goals in any voluntarily filed EE&C plan.

In the overview of its Plan, UGI-Electric states as follows:

- Includes programs and individual measures that are anticipated to produce peak load reductions of approximately 1% annually, although the Company did not design the programs and measures with the specific purpose of achieving any peak load reduction targets;

Plan at 2.

The OCA did not address this issue in its testimony and takes no position in this Brief on whether specific peak load reduction targets should be included in UGI-Electric's Plan.

4. Reduction in Total Plan Expenditure Levels

UGI-Electric projects annual costs of \$2.867 million for its voluntary EE&C Plan, with a total budget of approximately \$8.6 million for the three years of the Plan's operation.⁷

UGI-Electric St. No. 3 at 4. In developing its budget for the Plan, UGI-Electric was guided by the 2% of annual revenue target set forth in Act 129, 66 Pa.C.S. § 2806.1(g). UGI-Electric witness McAllister described UGI-Electric's method as follows:

UGI-Electric has constructed the Plan with an approximate 2% annual expenditure target on EE&C Plan programs and measures using the base period specified in the Secretarial Order, June 1, 2007 through May 31, 2008. The jurisdictional revenues for this period were approximately \$125.3 million. Based on this revenue level, the Company proposes an annual budget for expenditures on the EE&C Plan programs and measures of approximately \$2.867 million...

UGI-Electric St. No. 3 at 5.

⁷ UGI-Electric notes that it did not propose an annual limit on expenditures as it anticipates it will take time to fully implement the individual programs. The Company therefore indicates that spending in the first year of the Plan may be less than the projected \$2.867 million, while spending in later years may be greater. UGI-Electric states, however, that its overall expenditures for the three-year duration of the Plan will not exceed the budgeted \$8.6 million. UGI-Electric St. No. 3 at 6-7.

This annual budget represents approximately 2.3% of the June 2007 through May 2008 Company revenues. While this percentage exceeds the limit established in Act 129, the OCA notes that in the December 2009 Secretarial Letter the Commission states that:

...while the cost limits contained in Act 129 are not applicable to a voluntary EE&C plan, an EDC submitting such a plan must justify the level of expenditures it proposes whether they meet the Act 129 cost limits or not.

December 2009 Secretarial Letter at 2.

The OCA submits that the Company has not justified its proposed expenditure level, particularly in view of the fact that its fuel-switching incentive payment levels are unnecessarily high. OSBA witness Knecht recommends that the average annual spending for the life of the Plan should be limited to 2% of annual revenues to be consistent with Act 129. OSBA St. No. 1 at 9; OSBA St. No. 3 at 6. The OCA concurs with the OSBA witness Knecht's recommendation.

5. Recovery of Plan Costs by Customer Class

Act 129 requires that the cost of all EE&C measures be recovered from the customer class that receives the direct energy and conservation benefit of those measures. 66 Pa.C.S. § 2806.1(a)(11). In its December 2009 Secretarial Letter, the Commission followed Act 129 when it stated that for voluntary EE&C plans, "the costs must be allocated to the customer rate class that receives the benefit of any particular EE&C plan measure to avoid inter-class cost subsidies." December 2009 Secretarial Letter at 2.

The Commission also addressed this cost allocation requirement in its January 2009 Act 129 Implementation Order. There it stated:

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it benefits. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we will require it to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs

that can be clearly demonstrated to relate exclusively to measures that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, must be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles. (Footnote omitted)

Implementation Order at 36-37.

In accordance with these requirements, UGI-Electric's Plan states as follows:

Consistent with the Implementation Order, UGI-Electric has designed the Plan to provide that EE&C measures are paid for by the same customer class that receives the energy efficiency and conservation benefits of those measures by assigning the costs related to each measure to those classes that will receive the benefits.

Plan at 7. In the same vein, UGI-Electric witness Raab testified:

...the direct cost of each measure will be assigned to the customer class implementing that measure. General or administrative costs that apply system-wide to all programs will be allocated to individual customer classes based upon projected sales volumes.

UGI-Electric St. No. 2 at 7.

OSBA witness Knecht recommended a change to the UGI-Electric's method for allocating administrative costs common to all programs. Mr. Knecht stated:

Common program administrative costs are incurred to support the EE&C programs. It is therefore more reasonable to allocate these costs in proportion to direct program costs, rather than an arbitrary overall kWh basis... I therefore recommend that the common costs be allocated among the rate class groups in proportion to the program costs that are directly assigned to each rate class group.

OSBA St. No. 1 at 12.

In UGI-Electric's Rebuttal Testimony, witness McAllister indicated that the Company agreed with Mr. Knecht and that, absent any undue burden in doing so, it would allocate common administrative costs as Mr. Knecht recommended. Mr. McAllister stated:

This approach minimizes cross-subsidies and is more precise, and given that we can implement it without undue administrative burden, UGI-Electric agrees to allocate EE&C Plan administrative costs on the basis of each class program costs as proposed by the OSBA.

UGI-Electric St. No. 3R at 11.

The OCA has no objection to the UGI-Electric cost allocation proposal as modified by Mr. Knecht's recommendation.

6. Expansion or Modification of Energy Efficiency Customer Education Program

The testimony of OCA witness Crandall expressed concern for the lack of public awareness of the energy consumption of plasma televisions and home entertainment systems. He also expressed concern for the lack of consumer knowledge regarding "phantom load," meaning devices that consume electricity when plugged in but not turned on. Accordingly, Mr. Crandall proposed that UGI-Electric's EE&C Plan should address these concerns by including public education activities, with special emphasis on the energy consumption of home entertainment systems, TV's and phantom power loads, as part of the Plan. OCA St. No. 1 at 6-8.

In response, UGI-Electric witness Raab objected to Mr. Crandall's recommendation on the grounds that the Company faces a budget constraint as well as cost effectiveness requirements. Mr. Raab asserted that the Company relies on net TRC benefits to support education activities and that it is difficult to ascribe energy savings to such activities. Consequently, he stated that the cost of education efforts must be supported through the cost-effectiveness of other programs to which energy savings can be ascribed. UGI-Electric St. No. 2R at 12.

The OCA recognizes the importance of UGI-Electric establishing the cost-effectiveness of its portfolio of programs. If that is established, the OCA would urge the Commission to direct

UGI-Electric to develop an energy efficiency education program that includes the types of energy efficiency awareness concerns expressed by Mr. Crandall.

7. Funding Percentage for Residential Lighting

UGI-Electric's Plan includes a Compact Fluorescent Lighting (CFL) Campaign under which the Company proposes to distribute 186,000 CFLs over the three-year course of its Plan. The Company estimates a TRC result for this campaign at 5.36. Plan at 23, 28.

As part of his analysis of the Plan, OCA witness Crandall recommended that the number of CFLs distributed under this program be doubled. OCA St. No. 1 at 6. In his testimony, Mr. Crandall stated:

Since this program is expected to pass the TRC screens with an overall 5.36 TRC value, and can be easily and quickly implemented, the number of bulbs included in this program should be increased substantially.

OCA St. No. 1 at 6.

In Rebuttal, the Company objected to Mr. Crandall's proposal on a number of grounds including that is premature and would affect the breadth of the program offerings under the Plan. UGI-Electric St. 2R at 10-12. In Surrebuttal Testimony, Mr. Crandall further explained his reasoning for recommending a significant expansion of the CFL program. Mr. Crandall stated:

It is particularly important for a new energy efficiency initiative to get off to a good start. This program has the potential to help customers implement energy efficiency measures that produce savings, are tangible, proven, and can be readily adopted by a large number of customers. The CFL program can provide a rapid and favorable response and high uptake level by customers. CFL bulbs represent a very attractive and straightforward option to help UGI-Electric get off to a good start with its customers. By increasing its level of resources targeted to the CFL bulb program, UGI-Electric should increase participation levels and enhance savings. The anticipated ratio of program expenses to the estimated kWh saved, the resulting TRC in excess of 5:1 over the three year period, and the wide applicability of CFL bulbs to customers (including specialty bulbs), suggests that it would be prudent to deploy more funds to the CFL bulb program ... I would find an increase in funding to the CFL Program to be a positive step in improving the Plan.

OCA St. No. 1-S at 2.

Mr. Crandall thus makes a case for looking to what measures may improve customer receptivity to the overall EE&C Plan initiative. Based on his experience, Mr. Crandall views the CFL campaign as one that could jump start customer interest and participation in all of the Company's residential programs and thereby improve the cost-effectiveness of each of those programs. The OCA strongly encourages the Commission to consider Mr. Crandall's recommendation. Steps that have the potential to increase the overall cost-effectiveness of the Plan should not be dismissed lightly.

8. Modification to Commercial Lighting

UGI-Electric's Plan includes a Commercial and Industrial (C&I) Custom Incentive Program which is targeted at all new and existing commercial and industrial facilities. The Plan states that, "the program will be available for any type of new or replacement energy-efficient equipment not eligible for a prescriptive rebate through UGI-Electric's other EE&C Programs." Plan at 42. Included among the eligible measures that would qualify for incentives under the C&I Custom Program is the installation of more energy-efficient lighting.

Based on his analysis of UGI-Electric's Plan, OCA witness Crandall recommended that rather than employ a custom approach to setting the incentives (rebates) for commercial lighting upgrades, the Company should adopt "prescriptive rebates," *i.e.*, specific pre-set amounts for each type of energy-efficient commercial lighting technology. Mr. Crandall stated:

Commercial lighting, such as T-12 and T-8 replacements, exit lights, security lighting, high wattage CFL's, specialty compact and fluorescent lighting were not included as a simple prescriptive rebate in the Plan...UGI-Electric should make it more transparent and easier for customers to understand rebate levels for lighting improvements. The prescriptive rebate is a highly effective approach. UGI-Electric has not included this in its Plan for commercial lighting ...

OCA St. No. 1 at 5.

In Exhibit GCC-2 to his testimony, Mr. Crandall provided an example of a lighting incentive program from the state of Wisconsin that relied entirely on prescriptive rebates for a host of commercial lighting technologies. In reference to the Wisconsin program, Mr. Crandall stated, "This is a far more straightforward approach than the custom approach proposed in the Plan." OCA St. No. 1 at 6.

In its Rebuttal Testimony, UGI-Electric rejected Mr. Crandall's proposal. First, it noted that prescriptive rebates might be appropriate if the Company had an unlimited Plan budget. The Company asserted it was more appropriate to allow customers (as part of a customized program), and not UGI-Electric, to make the decisions about what energy saving technologies best meet their needs. Second, the Company argued that commercial lighting upgrades typically occur based on a study performed by a lighting expert. UGI-Electric maintains that by not favoring particular technologies through prescribed incentive payments, it is encouraging the lighting experts to optimize the energy savings for each application. The Company also states that new lighting technologies are emerging, that some may emerge while its Plan is in effect and that using prescriptive rebates would lock the Company in to existing technologies that may not be the most energy-efficient. UGI-Electric St. No. 2R at 7-9.

Mr. Crandall responded in Surrebuttal Testimony by noting that his recommendation for using prescriptive rebates was intended to enhance implementation and administration of the program. Mr. Crandall stated:

...my suggestion was and continues to be that a prescriptive incentive be available to customers for a broad number of technologies. By doing so, the implementation and administration of the program should be enhanced. In addition, this approach should minimize customer impediments, barriers, up-front requirements and should enhance participation levels and customer uptake.

OCA St. No. 1-S at 2.

Thus, Mr. Crandall's recommendation regarding prescriptive rebates is intended to enhance customer participation in the C&I Program by simplifying and making the financial incentives more transparent. As with his recommendation to expand the CFL program, Mr. Crandall's objective is to increase customer understanding and acceptance of the Program and in so doing, increase the Program's cost-effectiveness. For these reasons, the OCA would urge the Commission to give Mr. Crandall's proposal strong consideration.

9. Notice Period for Change in Plan Rider Charges

As required by the Commission's December 2009 Secretarial Letter, UGI-Electric has included in its Plan a "section 1307 cost recovery mechanism," that is, a proposal for a reconcilable adjustment charge authorized under Section 1307 of the Public Utility Code by which the Company will recover the costs of creating, designing and implementing its EE&C Plan. UGI-Electric refers to this cost recovery mechanism as its Energy Efficiency and Conservation (EEC) Rider.

UGI-Electric proposes to adjust the EEC Rider annually and describes that process as follows:

The Company proposes to adjust the EEC Rider for actual program expenses and revenues each year. Each year, the Company will submit a filing to become effective on one day's notice to reconcile the previous period's revenues and expenses and adjust the EEC Rider. In addition, the Company reserves the right to make an interim filing (also to become effective on one day's notice) to adjust the EEC Rider if it becomes evident that the over or under recovery is significantly deviating from expected activity.

UGI St. No. 3 at 9-10.

OCA witness Crandall commented on this proposal for adjusting the EEC on one day's notice by stating:

...putting in place an increased rider with one day's notice (even on an interim basis) does not appear to be reasonable. I would suggest that at least 30 days be required before UGI-Electric could increase its energy efficiency and conservation rider. If UGI-Electric discovered it was in an over recovery situation and intended to lower the rider then the one day notice would be reasonable.

OCA St. No. 1 at 22.

UGI-Electric witness McAllister responded to Mr. Crandall's recommendation for a longer notice period for EEC adjustments by stating that UGI-Electric would not object to providing 30 days' notice for all adjustments, whether up or down, for both the EEC Rider and its proposed CD Rider. UGI-Electric St. No. 3R at 10.

As the OCA and the Company have reached accord on this point, and no other parties have commented on the issue, the OCA requests that the Commission direct that all adjustments to the EEC Rider be effective upon a minimum of 30 days' notice. While the OCA opposes inclusion of the CD Rider, if the Commission authorizes such a rider, the OCA would urge that it too be subject to change only upon a minimum notice of 30 days.

10. Necessity for Prudence Review of Plan

The OCA is not briefing this issue.

11. Applicability of Plan to Small Business Customers

The OCA is not briefing this Issue.

12. Expansion to Include Solar Thermal and/or Other Tier I Resources

At the evidentiary hearing in this proceeding, UGI-Electric and the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) entered a Joint Stipulation which provided that as part of any EE&C plan that UGI-Electric implements at the conclusion of this proceeding, UGI-Electric will include a solar installation rebate, as recommended by SEF, for residential customers who switch from an electric water heater to a qualifying solar thermal water heating

system. In its Direct Testimony, SEF recommended a rebate of \$461 for such a conversion. SEF St. No. 1 at 6-7.

The OCA was asked to state its position on the Joint Stipulation at the evidentiary hearing and indicated that it did not oppose the Stipulation. This remains the OCA's position.

13. Other Modifications

a. Cost Recovery Offsets

In Direct Testimony, OCA witness Crandall encouraged UGI-Electric to take advantage of PJM demand response financial incentive opportunities. Mr. Crandall stated:

I suggest that as UGI-Electric implements and fine-tunes its Plan that it does a feasibility analysis and determines if there are benefits to the ratepayers if they were to participate in the PJM Demand response bidding auctions. Any financial incentives e.g., capacity payments emanating from successful PJM bidding should be used to reduce the level of the revenue needed to operate the EE&C Plan programs.

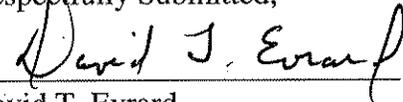
OCA St. No. 1 at 24-25.

In Rebuttal Testimony, UGI-Electric witness Raab responded to Mr. Crandall's recommendation by indicating that he saw no reason why UGI-Electric would not participate in the PJM auctions to the extent they are available and cost-effective. Further, he saw no reason why the Company would not use any resulting financial payments to reduce the level of revenue needed to operate the EE&C Plan programs. UGI-Electric St. No. 2R at 26. Accordingly, the OCA encourages the Commission to direct UGI-Electric to pursue opportunities to use any energy efficiency savings and demand response reductions that result from the Plan's programs to bid into PJM's market auctions and to use any revenue received from the auctions as an offset to the costs of the Plan recovered through the EEC Rider.

V. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission reject UGI-Electric's EE&C Plan as filed and instruct the Company that if it elects to refile its Plan that it resubmit a Plan modified in the manner suggested by the OCA in this Brief.

Respectfully Submitted,



David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

June 2, 2011

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PROPOSED FINDINGS OF FACT

1. UGI-Electric filed its proposed Energy Efficiency & Conservation Plan with the Public Utility Commission on November 9, 2010.
2. UGI-Electric's Plan was the first to be filed voluntarily by a small Electric Distribution Company pursuant to the Commission's Secretarial Letter of December 23, 2009.
3. The certificated natural gas distribution company operating within UGI-Electric's service territory is its affiliate, UGI-Penn Natural Gas Inc. OCA St. No. 1, Exh. GCC-5.
4. UGI-Electric affiliates, UGI Energy Services Inc., a licensed natural gas supplier (NGS), and Amerigas, an unregulated propane supplier, both conduct business within the UGI-Electric service territory. OCA St. No. 1, Exh. GCC-5.
5. With respect to the recovery of lost revenue, UGI-Electric has proposed recovery either through a Section 1307 surcharge, its proposed Conservation Development Rider, or through the creation of a regulatory asset to be tracked and recovered in a subsequent base rate case. Plan at 77-78; UGI St. No. 3R at 7.
6. UGI-Electric bases its projected lost revenue on the basis of "deemed" energy savings from the Commission's Technical Reference Manual (TRM). Plan at 77. UGI St. No. 3 at 12.
7. Nowhere in the TRM is it stated that the TRM is to be used for ratesetting purposes.
8. UGI-Electric's last base rate case was filed in 1995. OSBA St. No. 3 at 2.
9. In UGI-Electric's March 31, 2011 Financial Report to the Commission, its reported return on common equity was 13.08 percent as of December 31, 2010. OSBA St. No. 3 at 2.
10. The residential fuel-switching incentives proposed by UGI-Electric equal 100% of the anticipated incremental cost of switching from electric to natural gas or propane for water heating and clothes drying, and 75% of the anticipated incremental cost of making the conversion for space heating. UGI-Electric includes in these incremental costs the costs of gas piping, connections and service lines, where necessary. Plan at 57; Tr. at 67; OCA St. No. 1, Exh. GCC-3; Tr. at 68.
11. UGI-Electric anticipates that 60 residential customers will make the conversion from electric to natural gas or propane for space heating in each of the three years of its EE&C Plan. Plan at 62.
12. UGI-Electric's residential fuel-switching program assumes that the conversion will be made to standard efficiency gas equipment. OCA St. No. 1, Exh. GCC-6.

13. UGI-Electric's residential fuel-switching program includes low-income customers. Plan at 58.

14. UGI-Electric's planned expenditures for its Plan are \$2.867 million annually, which represents 2.3% of its jurisdictional revenues for the year June 1, 2007 through May 31, 2008. UGI-Electric St. No. 3 at 4-5.

15. UGI-Electric has agreed that changes to its EEC Rider should be made only after at least 30 days' notice. UGI St. No. 3R at 10.

PROPOSED CONCLUSIONS OF LAW

1. UGI-Electric, as the party seeking affirmative relief in this proceeding bears the burden of proof. 66 Pa.C.S. § 332(a). The Company also bears the burden of persuasion. *Riedel v. County of Allegheny*, 159 Pa.Cmwth. 583; 591, 633 A.2d 1325; 1328 n. 11 (1993).
2. UGI-Electric's claim for lost revenue recovery is contrary to the express public policy of the Commonwealth as set forth in 66 Pa.C.S. § 2806.1(k)(2) and (3).
3. Granting UGI-Electric's request for recovery of lost revenue is an exercise in prohibited single-issue ratemaking. *Pennsylvania Indus. Energy Coalition v. Pennsylvania Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Commw. Ct. 1995).
4. The Commission Order in *Investigation into Demand Side Management By Electric Utilities -- Uniform Cost Recovery Mechanism*, 80 Pa. P.U.C. 608 (1993) no longer has precedential value on the matter of lost revenue recovery as it has been superseded by the General Assembly's public policy pronouncement in 66 Pa.C.S. § 2806.1(k)(2) and (3).
5. Setting rates for recovery of lost revenue on the basis of the TRM's "deemed savings" amounts is too speculative and would result in rates that are not just and reasonable as required by 66 Pa.C.S. § 1301.
6. Including natural gas infrastructure costs as part of fuel-switching incentive payments is an improper subsidy from electric ratepayers to natural gas ratepayers and results in unjust and unreasonable rates as prohibited by 66 Pa.C.S. § 1301.
7. Setting unnecessarily high fuel-switching incentive payments for which the company will be compensated through its EEC Rider results in unjust and unreasonable rates as prohibited by 66 Pa.C.S. § 1301.
8. UGI-Electric has not justified the overall expenditure level of its EE&C Plan as required by the December 2009 Secretarial Letter.

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Initial Brief of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of June 2011.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Charles Daniel Shields, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for: *Office of Trial Staff*

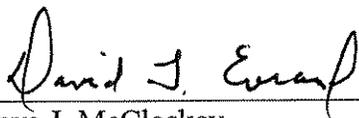
SERVICE BY E-MAIL and FIRST CLASS MAIL

Kevin J. McKeon, Esquire
Tori L. Giesler, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 171011
Counsel for: *UGI Utilities, Inc. – Electric
Division*

Mark C. Morrow, Esquire
Melanie J. Tambolas, Esquire
UGI Corporation
460 Gulph Road
King of Prussia, PA 19406
Counsel for: *UGI Utilities, Inc. – Electric
Division*

Steven C. Gray
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
Counsel for: *Office of Small Business Advocate*

Kenneth L. Mickens, Esquire
Kenneth L. Mickens, Esquire LLC
316 Yorkshire Drive
Harrisburg, PA 17111-6933
Counsel for: *Sustainable Energy Fund of
Central Eastern Pennsylvania*



Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAppleby@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

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