

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**INITIAL BRIEF OF
UGI UTILITIES, INC. – ELECTRIC DIVISION**

RECEIVED

2011 JUN -2 PM 4: 11

PA PUC
SECRETARY'S BUREAU

Kevin J McKeon (Attorney ID No. 30428)
Hawke McKeon & Sniscak LLP
100 N. 10th Street
Harrisburg, PA 17101
Tel.: (717) 236-1300
E-mail: kjmckeon@hmslegal.com
Mark C. Morrow (Attorney ID No. 33590)
Melanie J. Elatieh (Attorney ID No. 209323)
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Tel.: (610) 768-3628
Fax.: (610) 992-3258
E-mail: morrowm@ugicorp.com
E-mail: melanie.elatieh@ugicorp.com

Counsel for UGI Utilities, Inc., Electric Division

Dated: June 2, 2011

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	HISTORY OF THE PROCEEDING	3
III.	SUMMARY OF ARGUMENT	5
IV.	ARGUMENT	8
	A. Burden of Proof/Applicable Legal Standard.....	8
	1. Burden of Proof, Generally.....	8
	2. Applicable Legal Standard.....	8
	B. Filed Plan	11
	1. Position Regarding Approval of Plan as Filed.....	11
	2. Filed Plan’s Adherence to Commission’s December 23, 2009 Secretarial Letter Guidelines.....	11
	3. Filed Plan’s Cost-Effectiveness	12
	4. Filed Plan’s Voluntary Nature/Company’s Ability to Withdraw Plan If Commission Removes Revenue Recovery Mechanism.....	14
	C. Proposed Modifications to Filed Plan.....	17
	1. Elimination of Any Revenue Recovery Mechanism	17
	a. Lost Revenue Recovery is Lawful.....	18
	b. Lost Revenue Recovery is Desirable As a Matter of Policy.....	21
	c. CD Rider Recovery is Optimal	28
	d. Regulatory Asset Recovery is Acceptable.....	31
	2. Elimination or Modification to Fuel Switching Program	33
	a. Fuel Switching is Permitted	33
	b. Fuel Switching as Proposed by UGI Electric is Desirable	35
	c. The Specific Criticisms of OTS and OCA are Meritless.....	37
	(i) Fuel Neutrality	37
	(ii) Incentive Levels.....	38
	(iii) Air Conditioning.....	41
	(iv) High Efficiency Devices	42
	(v) Low Income Customers and Fuel Switching.....	43

PA PUBLIC UTILITY COMMISSION
 SECRETARY'S OFFICE

JUN - 2 2011

RECEIVED

3.	Inclusion of Peak Load Reduction Targets	44
4.	Reduction in Total Plan Expenditure Levels	45
5.	Recovery of Plan Costs by Customer Class.....	46
6.	Expansion or Modification of Customer Education	47
7.	Funding Percentage for Residential Lighting	47
8.	Modification to Commercial Lighting.....	49
9.	Notice Period for Change in Plan Rider Charges	50
10.	Necessity for Prudence Review of Plan.....	51
11.	Applicability of the Plan to Small Business Customers	52
12.	Expansion to Include Solar Thermal and/or Other Tier I Resources.....	53
13.	Other Modifications	54
V.	CONCLUSION.....	54
	ATTACHMENT A - Proposed Finding of Fact	
	ATTACHMENT B - Proposed Conclusions of Law	

TABLE OF AUTHORITIES

Cases

<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans</i> , Docket Nos. M-2009-2092222, M-2009-2112952, & M-2009-2112956, 2009 WL 3637665, at 76 (Oct. 28, 2009) (Jan. 16, 2009))	12
<i>Elias Nieves v. Pennsylvania Board of Probation & Parole.</i> , 983 A.2d 236 (Pa. Cmwlth. 2009)	15
<i>Pennsylvania Industrial Energy Coalition v. Pennsylvania Public Utility Commission</i> , 653 A.2d 1336, (1995) <i>aff'd per curium</i> , 670 A.2d 1152 (1996)	15, 20
<i>Pennsylvania Industrial Energy Coalition v. Pennsylvania Public Utility Commission</i> , 653 A.2d 1336, <i>aff'd per curium</i> , 670 A.2d 1152 (1996) (“PIEC”)	19
<i>Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan, Approval of its Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan</i> , Docket No. M-2009-2093217, 2009 WL 3637664, (Oct. 27, 2009)	13
<i>Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan</i> , Docket No. M-2009-2093216, 2010 WL 1259671, (Feb. 17, 2010);	8
<i>Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan</i> , Docket No. M-2009-2093216, 2011 WL 765628, (Jan. 28, 2011);	8
<i>Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan</i> , Docket No. M-2009-2093216, 2011 WL 1826079, at *16 (May 6, 2011).	8
<i>Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan</i> , Docket No. M-2009-2093218, 2009 WL3481832, at *45 (Oct. 23, 2009)	13
<i>Ronald M. McDonald, t/d/b/a Rusmin Trucking</i> , 67 Pa. P.U.C. 61 (1988)	15
<i>Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission</i> , 578 A.2d 600 (Pa. Cmwlth. 1990)	8
<i>Se-Ling Hosier, Inc. v. Margulies</i> , 364 Pa. 45, 70 A.2d 854 (1950)	8

Statutes

66 Pa.C.S. § 332	8
66 Pa.C.S. § 315	8
66 Pa. C.S. §§ 501, <i>et seq.</i>	1

66 Pa.C.S. § 1307.....	16, 20, 21, 28
66 Pa.C.S. § 1308.....	16
66 Pa.C.S. § 1319.....	10, 19, 20
66 Pa.C.S. § 2806.1.....	9, 11, 18, 52
Act 129.....	passim

Other Authorities

<i>Act 129 Fuel Switching Working Group Staff Report</i> , Docket No. M-00051865	34
<i>American Recovery and Reinvestment Act of 2009 Investigation</i> , Docket No. I-2009-2099881 (“ARRA Investigation”)	20, 21
<i>American Recovery and Reinvestment Act of 2009 Investigation</i> , Docket No. I-2009-2099881 (Final Report January 24, 2011)	20, 21
<i>Investigation Into Demand Side Management By Electric Utilities Uniform Cost Recovery Mechanism</i> , 80 Pa. P.U.C. 608, 633-641 (1993) (“1993 DSM Order”)	passim
Oregon PUC Order No. 02-634, Stipulation Adopting Northwest Natural Gas Company Application for Public Purpose Funding and Distribution Margin Normalization (September 12, 2003)	23
Secretarial Letter Re: Voluntary Energy Efficiency & Conservation Program, Docket No. M-2009-2142851 (December 23, 2009) (“Secretarial Letter”)	passim
Technical Reference Manual (“TRM”)	passim
Implementation of Act 129 of 2008 - Total Resource Cost (TRC) Test, Docket No. M-2009-2108601 (Jun. 23, 2009) (“TRC Order”)	49

Regulations

52 Pa. Code § 5.41	3
--------------------------	---

I. INTRODUCTION

This case presents the Commission's first opportunity to consider an energy efficiency and conservation ("EE&C") plan filed on a *voluntary* basis by a smaller, non-Act 129 electric distribution company ("EDC"), as encouraged by the Commission in its Secretarial Letter of December 23, 2009 at Docket No. M-2009-2142851 ("Secretarial Letter"). The Plan put forward by UGI Utilities, Inc. - Electric Division ("UGI Electric" or the "Company"), with the modifications agreed to by the Company as described further below, is well-designed, comprehensive and cost-effective. The Plan has generated controversy, however, on two primary issues: (1) lost revenue recovery; and (2) fuel substitution. From UGI Electric's perspective, the Commission has the legal authority to rule favorably on both issues and should do so because both proposals are critical not only to the success of the Plan as a whole but also to furthering the policy goal of increasing energy efficiency and conservation in utility territories across the Commonwealth not governed by Act 129.

As to lost revenue recovery, it should come as no surprise that a utility would not voluntarily propose to actively encourage conservation, and thereby directly decrease its own revenues, without also proposing a mechanism that allows it to recover those lost revenues. When the Commission first addressed the issue in its 1993 Demand Side Management Order ("*1993 DSM Order*") proceeding, the Commission came to the same conclusion and was emphatic about the need to include a component in its DSM cost recovery mechanism that allowed for lost revenue recovery.¹ Although Act 129 proscribes such treatment for the large EDCs (to which it applies), the Commission is free to adopt a lost revenue recovery mechanism for the smaller non-Act 129 EDCs and should do so here. There is nothing speculative about the

¹ *Investigation Into Demand Side Management By Electric Utilities Uniform Cost Recovery Mechanism*, 80 Pa. P.U.C. 608, 633-641 (1993) ("*1993 DSM Order*").

quantification of revenues lost when specific EE&C programs are implemented: “lost revenues” is the flip side of the “deemed energy savings” coin against which all EE&C plans are measured. If the Commission is “deeming” a particular level of energy in kWh to be saved when a particular EE&C measure is adopted, the same calculation also necessarily quantifies the revenue lost when such “saved” kWhs are not distributed by the EDC.

As to fuel substitution, UGI Utilities, Inc. (“UGI”) advocated tirelessly in the Act 129 proceedings of the large EDCs in 2009 to include fuel substitution and, in particular, programs to encourage electric customers to save electricity and energy by switching inefficient applications for electricity (such as water heating, clothes drying, and space heating) to natural gas. Rather than mandate that the Act 129 EDCs amend their plans to include UGI’s proposed fuel substitution programs, the Commission in general approved those instances of fuel substitution actually proposed by a particular EDC but deferred consideration of fuel substitution generally pending receipt of a report from a Commission-appointed Working Group on fuel substitution. That report is now filed with the Commission and accepted, and it endorses the inclusion of fuel substitution by those EDCs that are inclined to include such programs in their plans. UGI Electric proposes fuel substitution here as an integral part of its EE&C Plan on that basis. The public advocate’s opposition to UGI Electric’s fuel substitution proposal, opposition which is, apparently based on the incorrect (and in any event, irrelevant) assumption that fuel switching will lavishly increase the revenues of UGI Electric’s affiliated natural gas distribution company, has no basis in the theory of energy efficiency plans. Fuel substitution stands on its own as a highly effective energy conservation measure, and UGI Electric’s proposed fuel substitution programs should be approved on that basis and for that reason.

This case presents the Commission with a choice. If *voluntary* EE&C plans are to be filed and implemented, smaller EDCs will need a lost revenue recovery mechanism. The components of proposed plans will need to be treated with the same general presumption of effectiveness with which the Commission greeted the EE&C plans filed by the Act 129 EDCs. UGI Electric has a *sincere* interest in pursuing energy conservation and implementing an EE&C plan, but can only do so if the Company is made whole for its costs and is permitted the latitude afforded larger EDCs in configuring and administering its Plan. UGI Electric urges the Commission to examine the Plan closely, give the Company the benefit of the doubt on any close calls as it did the large EDCs, and approve the filed Plan as modified by the Company during the course of the proceeding.

II. HISTORY OF THE PROCEEDING

On November 9, 2010, UGI Electric filed with the Commission its Petition seeking approval of its proposed EE&C Plan pursuant to 52 Pa. Code §5.41 (pertaining to petitions generally) and the Commission's Secretarial Letter (relating to voluntary filings of EE&C plans by EDCs with fewer than 100,000 customers). This filing consisted of the following: (1) a Petition requesting approval of UGI Electric's EE&C Plan and the associated proposed riders to recover program costs and projected lost revenues - the Energy Efficiency & Conservation Rider ("EEC Rider") and the reconcilable Conservation Development Rider ("CD Rider"); (2) UGI Electric's EE&C Plan, attached to the Petition as UGI Electric Exhibit 1; (3) the *pro forma* tariff pages for the EEC and CD Riders; and (4) three statements of direct testimony and associated exhibits in support of the EE&C Plan.

The Office of Trial Staff ("OTS") (through an Answer to Petition), Office of Consumer Advocate ("OCA") (through a Notice of Intervention, Public Statement and Answer), Office of

Small Business Advocate (“OSBA”) (through a Notice of Intervention, Notice of Appearance, Public Statement and Answer) and the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) (through a Petition to Intervene) became active parties. All UGI Electric stakeholders were served with notice of the filing and were provided with directions to access the Plan via the Company’s website by letter dated November 9, 2010. Aside from the public advocates and SEF, no stakeholder or other potentially interested party expressed a desire to participate.

Your Honor conducted a Prehearing Conference on January 5, 2011, at which a procedural schedule was adopted.² The schedule included dates for the filing of direct, rebuttal, surrebuttal and rejoinder testimony and scheduled evidentiary hearings for May 4 and 5, 2011. All parties submitted evidence in the case. The parties engaged in discovery, exchanged various rounds of testimony, and participated in settlement discussions.

On May 4, 2011, the parties convened to proceed with hearings as scheduled. UGI Electric and SEF advised that they had reached a Stipulation regarding the inclusion of solar thermal water heating as an approved alternative under the Plan’s fuel switching program. The hearing involved admissions into the record of all parties’ prefiled testimony and cross-examination of two of the Company’s three witnesses.

The Company stipulated to the identification and authenticity of the following statements and exhibits (as done on the record at the May 4, 2011 hearing) for admission into the record without cross-examination:

1. **OCA Statement Nos. 1** - the Prepared Direct and Surrebuttal Testimony of Geoffrey C. Crandall.
2. **OTS Statement Nos. 1, 1-R and 1-SR and OTS Exhibit No. 1** - the Prepared Direct, Rebuttal and Surrebuttal Testimony and Exhibit of Scott Granger;

² Scheduling Order, entered January 13, 2011.

3. **SEF Statement Nos. 1 and 1-S** - the Prepared Direct and Surrebuttal Testimony of John M. Costlow;
4. **OSBA Statement Nos. 1 (both Proprietary and Non), 2 and 3** - the Prepared Direct, Rebuttal and Surrebuttal Testimony and Exhibit of Robert D. Knecht;
5. **Joint Stipulation** – the Joint Stipulation signed by both UGI Electric and SEF.

At the May 4, 2010 evidentiary hearing, OCA and OTS conducted cross-examination of two of UGI Electric’s witnesses, Paul H. Raab and William J. McAllister. There was no cross-examination of Brian J. Fitzpatrick. After cross-examination of the Company witnesses was completed, the following statements and exhibits were admitted into the record:

1. **UGI Electric Statement No. 1 and Peoples’ Exhibit No. 1, Sections 1, 2, 4 and 5** – the Prepared Direct Testimony and Exhibits of Brian J. Fitzpatrick;
2. **UGI Electric Statement Nos. 2, 2R and 2RJ and UGI Electric Exhibit No. 1, Sections 2 and 3** – the Prepared Direct, Rebuttal and Rejoinder Testimony and Exhibits of Paul H. Raab; and
3. **UGI Electric Statement Nos. 3, 3R and 3RJ and UGI Electric Exhibit Nos. WJM-1 through WJM-5** – the Prepared Direct, Rebuttal and Rejoinder Testimony and Exhibits of William J. McAllister.

The hearing concluded in one day. The court reporter made the hearing transcript available on May 24, 2011.

In accordance with the procedural schedule set forth in the Scheduling Order, initial briefs on the contested issues are to be submitted on or before June 2, 2011, and reply briefs are to be submitted on or before June 14, 2010. This Initial Brief of UGI Electric is submitted in accordance with that schedule.

III. SUMMARY OF ARGUMENT

UGI Electric urges the Commission to approve its EE&C Plan as filed, with the modifications to which UGI Electric has agreed in its Stipulation with SEF (for inclusion of solar

thermal water heating) and in its rebuttal testimony concerning the notice issue raised by OCA (UGI to provide 30 days' notice, as opposed to one day's notice, of any adjustments, whether upward or downward, for both riders) and the cost allocation issue raised by OSBA (UGI to revise customer classes for the recovery of EE&C Plan costs).

Although the agreed-upon briefing template followed in this Initial Brief lists a number of issues, the reality is that the public advocates are largely concerned about two issues: (1) lost revenue recovery; and (2) fuel substitution. SEF, which originally contested the filing on grounds that the Plan is not "fuel neutral" has withdrawn its opposition as part of the solar thermal water heating Stipulation.

The Commission should permit lost revenue recovery. The Commission has the legal ability to do so and doing so makes sense, because, absent lost revenue recovery, there is a very substantial economic disincentive for a non-Act 129 EDC such as UGI Electric to file or implement a voluntary EE&C plan. UGI Electric proposed surcharge recovery of lost revenues through the CD Rider and continues to believe that a surcharge mechanism for recovery is in the best interests of UGI Electric's customers and shareholders. The Commission's reluctance in the past to approve surcharge recovery for lost revenues because of quantification concerns, opting instead for regulatory asset treatment, is essentially eliminated by the "deemed savings" approach to current EE&C plan success measurement: if "deemed savings" in energy can be quantified with specificity and assurance, so too can the lost revenues directly associated with such deemed energy savings. Accordingly, surcharge recovery can be implemented without concern. In the alternative, UGI Electric has proposed, and would accept, regulatory asset recovery of lost revenues in the same manner that the Commission approved in its *1993 DSM Order*.

With respect to fuel switching, the criticisms leveled by OTS and OCA are unavailing. Fuel switching has been expressly approved by the Commission for Act 129 EDCs, and UGI Electric's proposal is fully consistent with the Commission's approach. The Plan is fuel-neutral, as defined in context by the Working Group Report. The Plan has appropriate incentive levels. Other criticisms leveled by OCA, including misunderstandings about air conditioning load, the alleged need to encourage the purchase of high efficiency natural gas appliances through electric customer subsidies, and the alleged need to establish special rules for low income customers that are both discriminatory and costly, should be rejected.

Other Plan modifications proposed by the public advocates likewise should be rejected. The OTS' peak load reduction proposal is flatly inconsistent with the Secretarial Letter and would require a complete restructuring of UGI Electric's Plan with significant attendant Plan costs, even though OTS also is proposing to drastically cut the Plan budget. Its proposal is unworkable. Similarly, OSBA's proposal to trim the Plan's budget has no basis. The OCA's proposed tweaks to the customer education program, the residential lighting program, and the commercial lighting program all are flawed, either because they require a significantly larger budget than proposed, or because, like the commercial lighting proposal, they decrease rather than increase customer choice. Finally, the OSBA's proposal to institute a draconian prudence review of UGI Electric's voluntary Plan, and the OSBA's proposal to have small business customers "opt out" of the Plan altogether, are outlier proposals that are without merit.

UGI Electric is sincerely committed to implementing a successful EE&C Plan. It has agreed to modifications to the Plan as filed in response to proposals by SEF, OCA and OSBA. Except as otherwise agreed to by the Company, the record shows no reason for further

modification of the Plan; therefore, UGI Electric urges the adoption and approval of the Plan as modified to date.

IV. ARGUMENT

A. Burden of Proof/Applicable Legal Standard

1. Burden of Proof, Generally

The Company has the burden of proof under 66 Pa.C.S. §§ 315 and 332 to support any of its filings, and the burden extends to the Petition seeking approval of the EE&C Plan. The Commission has established throughout the various Act 129 proceedings that companies are required to support their plans by a preponderance of the evidence:

In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, even by the smallest amount, than that presented by other parties to the case. *Se-Ling Hosiery v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1950).

Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan, Docket No. M-2009-2093216, 2010 WL 1259671, at *7 (Feb. 17, 2010); 2011 WL 765628, at *10 (Jan. 28, 2011); 2011 WL 1826079, at *16 (May 6, 2011).

The Commission has examined companies' compliance with the requirements of Act 129 by this standard alone; nothing in the Public Utility Code requires a company to fulfill a higher burden.

2. Applicable Legal Standard

In its Secretarial Letter, the Commission encouraged smaller, non-Act 129 EDCs to file voluntary EE&C plans. The Commission specifically noted in its Secretarial Letter that those EDCs with fewer than 100,000 customers are exempt from Act 129's provisions, stating that it "recognize[s] that the Act 129 program contains a complexity and comprehensiveness that may

not be appropriate for small EDCs, due to the costs of such programs that must be supported by a smaller customer base.” Secretarial Letter at 2.

The Secretarial Letter provided guidance as to the elements such voluntary EE&C plans should contain. Many of the suggestions regarding plan development were not mandatory; however, the Commission made clear that voluntary EE&C plans must contain at least the following information:

- (1) a detailed plan with a description of energy efficiency and conservation 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 plan 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.

In addition to these elements, the Commission provided further guidance with regard to how smaller, non-Act 129 EDCs should construct their EE&C plans. The Secretarial Letter provided that certain elements of the Act 129 EE&C program are deemed applicable to any prudent and cost-effective EE&C plan. For instance, the Commission indicated that it will adopt the Act 129 definition of an “energy efficiency and conservation measure,” 66 Pa.C.S. § 2806.1(m) and apply it to all voluntary EE&C plan filings. Likewise, the evaluation measurement and verification (“EM&V”) of energy savings are to be performed using the Technical Reference Manual (“TRM”) established under Docket No. M-00051865. In addition, the Total Resource Cost (“TRC”) Test, as defined in Section 2806.1(m); and applied by the

Commission pursuant to order at Docket No. M-2009-2108601, is also applicable to all voluntary EE&C plans to determine whether a proposed voluntary EE&C plan is cost-effective.

The Secretarial Letter expressly requires that small EDCs filing a voluntary EE&C plan propose reductions either to “consumption” or “peak demand,” but there is no requirement for both: “Each petition must contain at least the following: (3) proposed energy consumption *or* peak demand reduction objectives *or* both.” Secretarial Letter at 1. The Commission further encouraged smaller EDCs that file voluntary EE&C plans to use the Act 129 targets as guiding principles in establishing energy consumption and peak demand reduction objectives, but did not mandate Act 129’s reduction targets for voluntary plans. The voluntary consumption reduction objective is to be measured against the filing EDC’s annual historical load for June 1, 2007 through May 31, 2008. Where a small EDC elects to set forth peak reduction goals, the objective should be measured against the filing EDC’s historical peak load for the same timeframe.

The Secretarial Letter further provided that all smaller EDCs that voluntarily file a plan will be required to submit an annual report to the Commission detailing the results of the EE&C plan, its cost-effectiveness and any additional information required by the Commission.

Section 1319 of the Public Utility Code provides the statutory authority for non-Act 129 EE&C plans; it governs the “recovery of all prudent and reasonable costs associated with the development, management, financing and operation” of a conservation or load management program. 66 Pa.C.S. § 1319. The *1993 DSM Order* relied on Section 1319 in determining that lost revenues are recoverable under the Public Utility Code, discussed *infra* at 18-21. Section 1319 also requires that appropriate accounting principles be followed in recovery of such costs, which UGI Electric has proposed. UGI Electric Exhibit 1 at 74-5.

B. Filed Plan

1. Position Regarding Approval of Plan as Filed

The EE&C Plan that UGI Electric proposes has been created to serve the best interests of its customers, and is consistent with the appropriate legal standard to be applied in this case, as well as the specific guidance set forth in the Commission's Secretarial Letter. The Plan's energy efficiency and conservation measures cover a broad range, and are designed to meet the needs of all classes of customers while simultaneously achieving energy consumption reduction targets of 1% per year during the life of the Plan, all of which will be accomplished in a cost-effective manner. In addition, although the Company has not proposed specific peak load reduction targets, UGI Electric anticipates that its Plan will produce demonstrable reductions to peak load.

UGI Electric's position is that its EE&C Plan should be approved as proposed and amended, including lost revenue recovery through the CD Rider and its fuel substitution programs.

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

UGI Electric's Plan fully complies with the requirements specifically set forth in the Secretarial Letter. Indeed, the OCA expressly recognizes this fact in its Answer to the Petition. OCA Answer at 4. The Company has proposed a portfolio of programs that fully addresses each of the Commission's guidelines for voluntary plans, designed to provide customer benefits and to meet targeted energy consumption reduction goals. In particular, the Plan's programs are designed to achieve an energy consumption reduction goal of 1% per year on UGI Electric's system through 2014, a goal that not only complies with the Commission's request that a voluntary plan achieve either consumption reduction or peak load reduction targets, Secretarial Letter at 1, but also hits the target imposed on Act 129 EDCs. *See* 66 Pa.C.S. § 2806.1(c)(1).

Moreover, UGI Electric anticipates that its Plan will produce demonstrable peak load reductions, although the Company did not design the EE&C programs with the intent of achieving specific peak load reduction targets.

3. Filed Plan's Cost-Effectiveness

The Commission adopted the TRC Test as its single standard for determining the cost-effectiveness of EE&C plans and “direct[ed] that EDCs evaluate the cost effectiveness of each of its energy efficiency or demand reduction programs using the TRC Test to be set forth in the version of the *California Manual* adopted by this Commission.” *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans*, Docket Nos. M-2009-2092222, M-2009-2112952, & M-2009-2112956, 2009 WL 3637665, at 76 (Oct. 28, 2009) (quoting *Re Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, 2009 WL 262134, at 15 (Jan. 16, 2009)). The TRC Test keeps in mind companies’ needs to make individual market forecasts, the unpredictability of volatile energy markets, the general context in which these companies operate and in which their plans will be implemented, and the impossibility of a one-size-fits-all methodology:

The creation of the cost effectiveness analysis using the Commission-approved TRC Test required the use of many assumptions regarding current and future energy prices. Given that such forecasting is very assumption-dependent, the intention of the TRC Test was to ensure that all EDCs were using the same basic methodology to calculate the cost and benefit of their EE&C Plan to eliminate potential discrepancies in calculations across companies. In some scenarios, companies used marginal deviations from the TRC Order methodology to more accurately reflect the circumstances affecting their particular plans. Where these deviations did not lead to material differences in the resulting cost effectiveness analysis, our disposition is that the Plan’s TRC Test should be approved.

*Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan, Docket No. M-2009-2093218, 2009 WL3481832, at *45 (Oct. 23, 2009).*

When evaluating a plan, the Commission verifies that the utility has used the correct methodology when calculating a plan's cost-effectiveness and confirms that the cost-benefit ratio meets the minimum requirements of Act 129:

Two areas that require review and analysis relate to the cost effectiveness of [the utility's] plan. First, it is important to verify that [the utility] follows the methodology set forth in the TRC Test Order in preparing its cost benefit analysis. Second, verification is required that [the utility's] Plan passes the TRC Test with a total plan cost-benefit ration of greater than 1.0

*Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan, Approval of its Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan, Docket No. M-2009-2093217, 2009 WL 3637664, at *53 (Oct. 27, 2009).*

UGI Electric designed its Plan to offer programs that meet the TRC test, which was adopted by the Commission for use in determining the cost-effectiveness of voluntary plans in its Secretarial Letter. UGI Electric Statement No. 2 at 6-7. The Plan as a whole, as well as each of the individual programs comprising it, is in fact cost effective under the Commission-established TRC Test. Analysis of the Plan in its entirety indicates a TRC benefit-to-cost ratio of nearly 2.04 for the proposed portfolio, with the complement of Residential Programs reflecting a TRC Benefit/Cost Ratio of 2.5 and the Commercial and Industrial Programs a ratio of 1.49. UGI Electric Exhibit No. 1 at 70. The total Plan benefit-to-cost ratio of 2.04 is far in excess of the 1.0 minimum TRC Test parameter required of the large EDCs' EE&C plans under Act 129. *Id.*

These ratios amply demonstrate the cost-effectiveness of UGI Electric's Plan, and no party has contested the Plan's cost-effectiveness under the TRC Test.³

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

UGI Electric has been candid from the outset of this voluntary EE&C Plan filing that (1) absent the proposed lost revenue recovery, it has no economic incentive to go forward with the Plan, and (2) given the voluntary nature of the filing, it believes it has the ability to withdraw the Plan if the Commission modifies it by eliminating lost revenue recovery or making some other change that makes implementation unattractive to the Company. *See, e.g.*, Petition at 12-13; UGI Electric Statement No. 3 at 3-4, 11; UGI Electric Statement No. 3R at 2-3; UGI Electric Statement No. 3RJ at 6-7. No party expressed the view in pleadings or testimony that such a withdrawal would be legally impermissible. Accordingly, although UGI Electric does not dispute the right of parties to challenge, at the appropriate time, UGI's legal right to withdraw the Plan in the event the Commission issues an order modifying it in a manner the Company deems unacceptable, grappling with the issue at the present time presents both a legal problem and a practical problem.

The legal problem is ripeness: there is simply no reason to address and decide, in advance of entry of a final Commission Order and UGI Electric's reaction to it, whether UGI Electric has the legal right to withdraw the Plan if the Commission modifies it. UGI Electric has always maintained it has the right to do so; now, apparently, the OTS will argue it does not. Tr. 35:11-36:16. The matter will not be ripe for decision, however, unless and until the Commission modifies the Plan and UGI Electric advises the Commission of its intent to withdraw it rather than implement it as modified.

³ OTS witness Granger's claim that the Plan is not cost effective because it includes lost revenue recovery is addressed *infra* at 27-28.

“Ripeness is a concept premised on the notion that judicial machinery should be conserved for problems that are real and present or imminent, not squandered on problems that are abstract or hypothetical or remote.” *Nieves v. Pa. Bd. of Prob. & Par.*, 983 A.2d 236, 241 (Pa. Cmwlth. 2009) (court dismissed as unripe action for a declaration that Department of Corrections was required to comply with a release order from Board of Probation and Parole where Board had not yet issued a release order); see *Pennsylvania Industrial Energy Coalition v. Public Utility Commission*, 653 A.2d 1336, 1352 (1995) *aff’d per curiam*, 670 A.2d 1152 (1996) (on question whether Section 1319 permits the recovery of lost revenues in the context of a base rate proceeding, Court refused to reach issue, finding it unripe because no utility had yet made a regulatory asset claim in the context of a base rate proceeding pursuant to Commission order permitting such claims); *Ronald M. McDonald, t/d/b/a Rusmin Trucking*, 67 Pa. P.U.C. 61 (1988) (where protestant to transfer application of competitor sought declaratory order interpreting certificate being transferred restrictively to prevent competition with protestant, PUC found that petition for declaratory order was not ripe because certificate permitting transfer had yet issued and any dispute could be resolved through other proceedings). At this stage of the proceedings, it is unknown whether the Commission will approve the Plan as filed or modify it, and it is unknown whether if the Commission modifies the Plan, UGI will accept the modifications and implement the Plan or decline to do so. As a result, there is no “live” controversy to address and resolve.

The practical problem, assuming the ripeness hurdle could be overcome, is that no party has explained why UGI Electric is not legally entitled to withdraw the Plan if modified by the Commission in a manner unsatisfactory to UGI Electric. That failure to articulate a rationale makes it difficult to respond.

UGI Electric nevertheless provides here reasons that support its view that it may withdraw the Plan following a Commission order that makes modifications, and will expect to respond as necessary to whatever arguments to the contrary are advanced for the first time in the briefs of other parties.

First, as the Secretarial Letter makes clear, UGI Electric is under no obligation to file an EE&C Plan and any filing it does make is purely voluntary. It necessarily follows, from the fact that the Company need not file *any* Plan, that it need not implement a modified plan that it never would have filed in the first place. To be sure, UGI Electric may not implement a plan that the Commission has not approved; but it would stretch the meaning of “voluntary” beyond recognition if the Commission were to hold that, once having filed a voluntary conservation plan of its own design that provides for the recovery of revenues inevitably lost, the Company may have foisted upon it an obligation to implement measures that will result in revenue losses without the ability to recover those lost revenues.

Second, because UGI Electric’s EE&C Plan is not a tariff filing under Sections 1307 or 1308 of the Code, it does not engage statutory mechanisms that could potentially result in a Commission order finding that a particular rate or set of rules is “just and reasonable” and thus must be implemented. UGI Electric did not “file” a tariff to initiate this proceeding such that it started the running of statutory deadlines that would require the Commission to either act to modify the tariff or allow it to go into effect. Rather, as the Commission directed in the Secretarial Letter, UGI Electric filed its EE&C Plan in the form of a Petition that the Commission will grant or deny; unlike a Section 1307 or 1308 tariff filing, nothing can happen to put the Plan into effect unless the Commission expressly decides to do so.

Third, UGI Electric's voluntary Plan is most akin to a certificate filing under Chapter 11 of the Code in which the company seeks authority to take certain actions. The Commission certainly has the authority to impose conditions when granting certificates of public convenience, but it has no authority to require the filing utility to accept a certificate as modified by the conditions imposed.

C. Proposed Modifications to Filed Plan

1. Elimination of Any Revenue Recovery Mechanism

The public advocates uniformly oppose UGI Electric's proposal to recover lost revenues as part of its voluntary EE&C Plan. OCA Statement No. 1 at 22-24, OCA Surrebuttal at 14-17; OSBA Statement No. 1 at 9-11, OSBA Statement No. 3 at 1-3; OTS Statement No. 1 at 8-11, 13-14; OTS Statement No. 1-SR at 5-10. UGI Electric's proposed and preferred lost revenue recovery mechanism is the as-filed CD Rider. UGI Electric Statement No. 3 at 13-16; UGI Electric Statement No. 3R at 2-4. No party criticized the mechanics of the CD Rider proposal or offered modifications to it. In rebuttal, UGI Electric presented an alternative lost revenue recovery proposal, regulatory asset treatment, in an attempt to address the opposition expressed by the public advocates to the CD Rider. UGI Electric Statement No. 3R at 7-9. But the OCA, OSBA and OTS opposed that as well, again without offering any proposed modifications or enhancements.

It is fair to say, therefore, that the OCA, OSBA and OTS simply oppose the concept of lost revenue recovery in any EE&C plan, for legal and regulatory policy reasons. As a consequence, debate on the issue now centers on whether the recovery of lost revenue through a *voluntary EE&C filing is permitted by law and is desirable as a matter of regulatory policy.* Assuming, as UGI Electric believes, that lost revenue recovery in a voluntary conservation plan is both permissible and desirable, the only remaining issue is whether lost revenue recovery

should be implemented through the CD Rider, which UGI Electric prefers, or regulatory asset treatment, which UGI Electric would accept. Without either, as UGI witness McAllister made clear in his testimony, the “disincentive to implement the Plan” may be insurmountable, and UGI Electric will be forced “to choose between implementing the Plan without lost revenue recovery (and thereby accelerating the filing of a base rate case) or withdrawing the Plan altogether.” UGI Electric Statement No. 3-RJ at 7:2-5. Under either of these alternatives that assume rejection of any lost revenue recovery mechanism, ratepayers will lose, “because they will either lose the benefits of [the] proposed EE&C Plan or they will end up paying higher rates sooner than they otherwise would have paid them” because UGI Electric will be forced to accelerate the filing of a base rate case. *Id.* at 7:7-9.

a. Lost Revenue Recovery is Lawful

The OCA, OSBA and OTS all apparently take the legal position that Act 129 prohibits lost revenue recovery for electric companies that implement EE&C plans. OCA Statement No. 1 at 23:18-19 (“the general assembly did not include lost revenue recovery treatment related to energy efficiency programs in Pennsylvania Act 129 for electric utilities”); OSBA Statement No. 1 at 10:1-5 (“Section 2806.1(k)”) is an “apparent legislative proscription” to lost revenue recovery); OTS Statement No. 1 at 13:17-18 (the “proposed CD rider is contrary to the legislative intent of Act 129”). This, of course, is simply incorrect. Although Act 129, which added Section 2806.1 of the Public Utility Code, expressly prohibits large EDCs from recovering lost revenues due to reduced energy consumption other than prospectively through a Section 1308 base rate proceeding, neither Act 129 nor Act 129’s lost revenue recovery prohibition applies to UGI Electric, because UGI Electric is an EDC “with fewer than 100,000 customers.” 66 Pa.C.S. § 2806.1(l) (“This section [i.e., the entirety of Section 2806.1] shall not apply to an electric distribution company with fewer than 100,000 customers.”). The statute could not be

more clear in this regard. If the legislature had wanted to require small EDCs to file EE&C plans and to prevent them from recovering the resulting lost revenues outside of the context of a base rate case, it would have drafted the statute to include small EDCs within the provisions of Section 2806.1. It did not. Rather, it expressly excluded small EDCs from the provisions of the Act.

The inapplicability of Act 129 does not leave a legal void, however. Section 1319 of the Public Utility Code, 66 Pa. C.S. § 1319, which directs the Commission to allow the recovery of “all prudent and reasonable costs associated with the development, management, financing and operation” of a “conservation or load management program,” provides all the authority that is necessary for the Commission to approve recovery of lost revenues as part of a voluntary EE&C plan. Indeed, the Commission’s *1993 DSM Order* did just that. In that case, the Commission expressly relied on Section 1319 as the proper statutory vehicle to “in effect, jump start the DSM process” by removing the “significant disincentives to the initiation of DSM programs” by adopting a “special rate making mechanism” that featured a lost revenue recovery component. *1993 DSM Order*, 80 Pa.P.U.C. 608, 623.⁴

The Commission’s *1993 DSM Order* was reviewed and for the most part affirmed by the Commonwealth Court in *Pennsylvania Industrial Energy Coalition v. Public Utility Commission*, 653 A.2d. 1336, *aff’d per curiam*, 670 A.2d. 1152 (1996) (“*PIEC*”). On the question whether Section 1319 permits the recovery of lost revenues in the context of a base rate proceeding, as the Commission in that case contended, the Court failed to reach the issue, finding it unripe

⁴ Specifically, the Commission decided in the *1993 DSM Order*, discussed more fully below, to permit lost revenue recovery through a regulatory asset, in part because, unlike the situation presented here where it is easy to quantify lost revenues through the “deemed savings” values for each plan program, the Commission in 1993 was less certain about how to calculate lost revenues (“[L]ost revenues are, by their nature, much more difficult to measure than DSM program costs. Therefore, we feel it necessary to require that these costs be recovered through a base rate proceeding so that they are based on actual program results, as verified through the rate making process.” *Id.* at 641.

because no utility had yet made a regulatory asset claim in the context of a base rate proceeding pursuant to the *1993 DSM Order*. *PIEC* at 1352-53. Although the Court remanded to the Commission for further development of the issue, that opportunity never arose, and the issue was never revisited by an appellate court.⁵

The lost revenue issue has arisen again in the context of the Commission's ongoing "ARRA" investigation.⁶ There, the Commission is considering potential rate mechanisms that might be needed to satisfy the ARRA federal funding requirement that the state implement appropriate rate making policies for electric and gas utilities to align their financial incentives with the promotion of energy efficiency and conservation.⁷ The ARRA Final Report confirms that, on the issue of lost revenue recovery, "no legal precedent exists that would preclude the Commission from reviewing/approving an RDM [revenue decoupling mechanism] or similar rate making change [e.g., a lost revenue recovery mechanism] for gas utilities under 66 Pa.C.S. § 1307(a)." ARRA Final Report at 31 n. 42. The same legal conclusion applies to UGI Electric, because, given that Section 2806.1 does not apply to EDCs with fewer than 100,000 customers, UGI Electric is in the same legal position as an NGDC for purposes of lost revenue recovery.

⁵ The court did, however, address the "single issue ratemaking" claim raised here by the OSBA, OSBA Statement No. 1 at 10:4-14; OSBA Statement No. 3 at 3:14-20. With respect to 1307(a) recovery, i.e., the method of recovery of lost revenues proposed by the CD Rider, the court, although not presented with the question whether lost revenues are conservation-related costs, did decide that it is appropriate to recover DSM related costs under Sections 1319 and 1307(a) of the Public Utility Code, *PIEC* at 1350. For its part, the Commission has already decided, expressly or implicitly in the *1993 DSM Order*, that lost revenue recovery either through a surcharge or through a regulatory asset is not proscribed single issue ratemaking. As the precise legal basis for OSBA's contention is not readily apparent, UGI Electric will address OSBA's argument as necessary in its response brief.

⁶ *American Recovery and Reinvestment Act of 2009 Investigation*, Docket No. I-2009-2099881 ("ARRA Investigation").

⁷ The PUC initiated the ARRA Investigation on May 6, 2009, solicited and received comments and reply comments, held a technical conference on November 19, 2009, established a working group to further discuss issues and to prepare a report regarding potential policies on December 18, 2009, and tasked the working group with submitting a final report. The ARRA Investigation Final Report ("ARRA Final Report") was issued January 24, 2011. The Final Report provides positions of working group members regarding the requirements of the ARRA, as well as extensive analysis regarding aligning energy conservation goals with utility ratemaking policies. The PUC has invited public comments on the report.

Put simply, there is no legal impediment to the Commission's adoption of UGI's lost revenue recovery proposal, either in the form of the CD Rider or in the form of a regulatory asset. The Commission already has decided in the *1993 DSM Order* that lost revenue recovery is legally permissible under Section 1319, and there embraced the regulatory asset mechanism to do it. The ARRA Final Report likewise concludes that there would be no legal impediment to lost revenue recovery, and expressly contemplates a 1307(a) surcharge to do it, *i.e.*, the CD Rider concept that UGI Electric proposes here. As a matter of law, therefore, lost revenue recovery is permissible.

b. Lost Revenue Recovery is Desirable As a Matter of Policy

Given that, by definition, a successful EE&C plan will erode a utility's revenues, it should come as no surprise that a utility considering implementation of a voluntary EE&C plan would need regulatory assurances that it will be "made whole" for the revenues it is certain to lose. That is precisely what the Commission recognized in the *1993 DSM Order* where it expressly decided that utilities should be "made whole" for their DSM lost revenue costs. *1993 DSM Order* at 641. Even the OSBA, which opposes lost revenue recovery in this case, has recognized that "absence of revenue decoupling [which the OSBA uses synonymously with lost revenue recovery in this context] in the Commonwealth might inhibit utilities from implementing conservation plans on a *voluntary* basis." Initial Comments of the OSBA in ARRA Investigation at 7. UGI witness McAllister made the point succinctly in his rebuttal testimony; without lost revenue recovery, UGI Electric has no economic incentive to implement an EE&C plan:

If the Commission were to adopt the public advocates' position to reject UGI Electric's lost revenue recovery proposal, it would eliminate any economic incentive for UGI Electric to implement its voluntary EE&C Plan. Projected annual lost revenue is significant, especially as the Plan matures, and the public

advocates' assumption that lost revenue will be offset in any significant way by increased revenues for UGI Penn Natural Gas, Inc. ("PNG"), UGI Electric's affiliated natural gas distribution company, is simply wrong, as I demonstrate. Finally, although we believe it is a less desirable approach from the perspective of both the company and the consumer, at least some of the lost revenue recovery concerns expressed by the public advocates could be allayed if, instead of the CD Rider, the Commission were to permit lost revenue recovery through regulatory asset treatment of accrued lost revenues.

UGI Electric Statement No. 3R at 2:6-17. Commenting on the anticipated levels of lost revenues associated with conservation, Mr. McAllister explained that by Year 3 of the Plan, UGI Electric expects annual revenue losses to exceed \$1 million, with the cumulative revenue loss at that point close to \$2 million. *Id.* at 3:2-4. As Mr. McAllister explained, revenue losses of this magnitude for a small utility such as UGI Electric would accelerate the need to file a base rate case, the fixed administrative costs of which would have a disproportionate impact on the customer base of a smaller EDC such as UGI Electric:

The cost of putting forth a base rate case is significant and these costs would be passed through to UGI Electric's customers. Due to the small size of its customer base, the rate case-related administrative costs would materially burden UGI Electric's customers (on top of the administrative costs relating to the development and implementation of this voluntary EE&C Plan). This impact is especially significant when compared to the impact on customers of a larger EDC. To lessen the impact of these costs on its customers, it would make sense for UGI Electric, as a smaller EDC, to wait until it absolutely needs to file a rate case, notwithstanding its need to recover the lost revenues associated with the implementation of its voluntary EE&C Plan.

UGI Electric Statement No. 3 at 11:17-12:3.

As a matter of policy, if the Commission wants small EDCs to implement voluntary EE&C plans, the Commission needs to address the issue of lost revenues, and permit recovery of lost revenues during the interim between implementation of the EE&C plan and the Company's

next base rate proceeding. The economic disincentive to implementation of a voluntary plan has not changed since the *1993 DSM Order*.

As UGI Electric witness Raab pointed out in his rebuttal testimony, numerous other regulatory authorities and industry groups have recognized and addressed this inherent conflict between conservation activities and financial performance:

- **Oregon:** In 2003 the Oregon Public Utility Commission approved a “conservation tariff” for Northwest Natural Gas Company “to break the link between an energy utility’s sales and its profitability, so that the utility can assist its customers with energy efficiency without conflict.” The conservation tariff seeks to do that by using modest periodic rate adjustments to “decouple” recovery of the utility’s authorized fixed costs from unexpected fluctuations in retail sales. (See Oregon PUC Order No. 02-634, Stipulation Adopting Northwest Natural Gas Company Application for Public Purpose Funding and Distribution Margin Normalization (September 12, 2003)).
- **California:** In 1982, California adopted an Electric Revenue Adjustment Mechanism (ERAM) and became the first state to decouple utility revenue from sales, removing disincentives for energy efficiency and conservation. Although the Commission discontinued the ERAM mechanism in 1996, it subsequently reinstated decoupling in the aftermath of the energy crisis. (See, e.g., Rulemaking 06-04-010 of the Public Utilities Commission of the State of California, filed April 13, 2006).

Southwest Gas Company received an order from the California PUC in March 2004 that authorizes it to establish a margin tracker that will balance actual margin revenues to authorized levels.
- **Maryland:** Electric and natural gas utilities in Maryland operate under revenue normalization adjustment (RNA) clauses to remove any disincentive to promote conservation and energy efficiency, consistent with the state’s Senate Bill 205, the EmPOWER Energy Efficiency Act of 2008.
- **American Gas Association/National Resources Defense Council:** In July 2004, the AGA and the NRDC issued a joint statement to NARUC on energy conservation that identified a primary obstacle as the “Energy Efficiency Problem,” under

which utilities are “penalized” for aggressively promoting energy efficiency. See Joint Statement of the American Gas Association and the Natural Resources Defense Council, Submitted to the National Association of Regulatory Utility Commissioners, July 2004, page 2. The 2004 Joint Statement, and a later 2008 Joint Statement to the same effect, are available at www.aga.org.

- **American Council for an Energy-Efficient Economy (“ACEEE”)**: ACEEE recently recognized the conflict between energy efficiency and utility financial well-being:

Industry experts have long recognized that under traditional rate-of-return regulation, utilities do not have an economic incentive to provide programs to help their customers be more energy efficient. In fact, they typically have a disincentive because reduced energy sales reduce utility revenues and profits.

Aligning Utility Interests With Energy Efficiency Objectives, ACEEE, October 2006, page 2.

UGI Electric Statement No. 2R at 30-32; Tr. 38:6-19.

There can be no dispute that utilities face an economic disincentive to implement conservation plans, and that voluntary plans will not be viable unless the disincentive is removed. This Commission recognized the point as early as 1993, and other jurisdictions and industry commenters have supported lost revenue recovery since. Voluntary plans continue to need a “jump start.” *1993 DSM Order* at 623.

Not persuaded, OCA, OSBA and OTS offer various regulatory policy reasons why lost revenue recovery should not be permitted.

- OCA argues, for example, that “deemed savings,” the values associated with each of the programs in the Commission-approved TRM, for purposes of determining conservation accomplishments, cannot be used to measure lost revenues because for that purpose the metric is only a “coarse indicator.” OCA Statement No. 1 at 23:19-22.
- OCA, OSBA and OTS all argue that UGI Electric’s fuel switching programs, pursuant to which electric customers are encouraged to save electricity by switching to natural gas use for certain applications, will significantly increase the revenues of UGI Electric’s affiliate UGI Penn Natural Gas, Inc. (“PNG”). OCA

Statement No. 1 at 24:6-10; OSBA Statement No. 1 at 10:17-11:4; OTS Statement No. 1 at 19:14-15 (“a skeptic or cynic could argue that the whole purpose of the incentivized fuel switching programs is to switch UGI-Electric customers over to UGI-Gas customers”).

- OSBA opposes lost revenue recovery on grounds that UGI Electric’s current returns are so high that it will have no need to file a base rate case notwithstanding millions in lost revenues, and that, even if UGI Electric were to file a base rate case, the likely result would be a rate decrease for small business customers. OSBA Statement No. 3 at 2:3-3:2.
- Finally, OTS argues that UGI Electric’s professed need for lost revenue recovery proves that UGI Electric’s Plan is not cost effective. OTS Statement No. 1 at 8-11.

None of these criticisms has merit.

First, OCA witness Crandall’s argument that “deemed savings” is a good way to measure reductions in electricity usage but a “coarse indicator” of lost revenues is neither principled nor persuasive. “Deemed savings” as developed in the TRM is the “gold standard” for measuring the effectiveness of Pennsylvania’s conservation programs. If it is appropriate to use it to measure the number of kilowatt hours saved, it is appropriate to use it to measure the lost revenues associated with those saved kilowatt hours. Failure to acknowledge this fundamental principle would make a mockery of Act 129 and the Commission’s entire EE&C program. Moreover, Mr. Crandall’s reasons for arguing that “deemed savings” are a “coarse indicator” of lost revenues is supported entirely by the dubious claim that the TRM deemed savings values are developed “using information from all over the state” that may be “dissimilar to UGI-Electric’s service territory and therefore not transferable.” OCA Statement No. 1 at 23:23-24:2. Quite apart from the fact that, if true, the same criticism would undercut the entire TRM for conservation measurement purposes, Mr. Crandall’s rationale makes no sense. Why would there be fewer kilowatt hours saved (and thus fewer lost revenues) if a customer installs a CFL in UGI Electric’s service territory in Luzerne County than the kilowatt hours saved when a customer

installs a CFL in PECO's service territory in Philadelphia, or Duquesne's service territory in Pittsburgh? Mr. Crandall's criticism simply has no basis.

Second, the public advocates' shared concern that lost revenue recovery is unnecessary because the NGDC affiliate of UGI Electric will benefit from a surge in revenue that will offset the loss in revenues that will be experienced by UGI Electric fares no better. In response to this unsupported assertion, Mr. McAllister quantified the total revenue that UGI Electric's affiliate PNG might possibly gain as the result of fuel switching by UGI Electric customers in the first year of the Plan: approximately \$38,000, roughly 10% of the revenues that UGI Electric will lose in the first year of the Plan. UGI Electric Statement No. 3R at 6:1-15. No party challenged Mr. McAllister's computation, either in surrebuttal testimony or on cross-examination.⁸ Moreover, as Mr. McAllister also explained, PNG is a separate legal entity; even if it stood to gain significant revenues, that would be no basis for refusing to allow lost revenue recovery to UGI Electric. UGI Electric Statement No. 3R at 5:9-19.

Third, OSBA's two rate case scenario criticisms are likewise unfounded. As to the first claim about the need for a rate case, Mr. McAllister explained that OSBA witness Knecht's claim that UGI Electric can stand to lose \$1 million in annual revenue and still earn an ROE "above 12%" is simply wrong. UGI Electric Statement No. 3RJ at 2:11-3:13. Correcting his testimony, Mr. Knecht conceded the point that he miscalculated the basis point impact of lost revenues, and that, rather than remaining "above 12%," his calculation of UGI Electric's ROE would remain "above 11%." OSBA Statement No. 3 at 2:15-18 (corrected page). What Mr. Knecht refused to concede, however, is that his "above 11%" conclusion is falsely premised on what Mr. McAllister described as UGI Electric's "raw, and therefore unadjusted and overstated

⁸ Nor did any party suggest that Mr. McAllister's estimated distribution revenue gains on the PNG System should be credited against UGI Electric's lost revenue recovery.

ROE for the 2010 period without making normalization adjustments for rate-based, revenue and expense items.” UGI Electric Statement No. 3RJ at 2:20-22. Quarterly earnings reports such as the one relied upon by OSBA merely show a snapshot of actual historical experience; they are not adjusted using a future test year budget as allowed under Commission regulations to reflect the effect of inflation on materials and services, union wage increases, etc., all of which tend to reduce the Company’s operating income and associated ROE. As Mr. McAllister explained, the only useful focus is on UGI Electric’s adjusted financials, reflected in Schedule D-2 of the UGI Electric Quarterly Financial Report on which Mr. Knecht relied. Calculated on this realistic basis (*i.e.*, the one UGI Electric will use to decide whether to file a rate case) lost revenues of the magnitude anticipated would cause UGI Electric’s ROE to fall to 10%. UGI Electric Statement No. 3RJ at 3:5-13.

As to Mr. Knecht’s second point, that in the event of an accelerated base rate case filing small business customers would get a rate decrease rather than increase, Mr. McAllister pointed out that Mr. Knecht’s conclusion is based not only on rank speculation, but also on the class rates of return for small business customer classes in UGI Electric’s last base rate case on an as-filed basis, rather than on the basis of the actual settlement in that case. In the settlement, the disparity between residential class returns and small business customer class returns was reduced dramatically. UGI Electric Statement No. 3RJ at 4:8-21.

Fourth, OTS witness Granger’s claim, that if UGI Electric were to recover lost revenues the Plan would not be cost effective, simply misunderstands the Commission’s approach to determining cost effectiveness. First, as Mr. Raab explained, the sole criterion of “cost effectiveness” for EE&C plan purposes is the TRC, and no party to this proceeding has challenged UGI Electric’s Plan on that basis: all acknowledge that UGI Electric’s plan is cost

effective as measured by the TRC standard. UGI Electric Statement No. 2R at 27:14-29:21. Second, even though Act 129 prohibits large EDCs from recovering revenues lost between the date their EE&C plan goes into effect and the EDC's next base rate case effective date, once the new base rates are in effect, they will, of necessity, recover lost revenues on a going-forward basis. That is because the new unit rates will increase to reflect the drop-off in consumption and the related drop-off in revenues. Thus, the only difference between UGI Electric's lost revenue recovery proposal and the EE&C plans of large EDCs is that UGI Electric seeks recovery of lost revenues during the interim period between implementation of the Plan and its next base rate case. All EDCs, even Act 129 EDCs, will get recovery of lost revenues as soon as their base rates are adjusted to reflect the drop in consumption and associated revenues. In other words, no EDC can pass Mr. Granger's test for "cost effectiveness," because all eventually will recover through rates the revenues lost to successful conservation. Therefore, Mr. Granger's attempt to impose a different test for "cost effectiveness" on UGI Electric as a basis for rejecting UGI Electric's proposal for interim lost revenue recovery is baseless.

c. CD Rider Recovery is Optimal

UGI Electric's EE&C Plan as filed proposes recovery of lost revenues through the CD Rider, a reconcilable surcharge billed to all customers pursuant to Section 1307 of the Public Utility Code. UGI Electric Statement No. 3 at 13:10-13. *Pro forma* tariff pages to implement the proposed CD Rider are attached to UGI Electric's EE&C Plan as Appendix A. (Exhibit WJM-4 shows the calculation of the proposed annual CD Rider.) *Id.* at 16-20.

As with any other reconcilable surcharge, the CD Rider's initial surcharge amount would collect a projected level of costs (*i.e.*, in this case, lost revenues calculated on the basis of "deemed savings" of electricity produced by anticipated customer participation in particular Plan programs). In the unlikely event that UGI Electric customers opt to participate in Plan programs

in precisely the way UGI Electric projects during the first year, the CD Rider will collect the precise amount of lost revenue associated with the collective “deemed savings” in kilowatt hours, and no reconciliation would be needed. Otherwise, the CD Rider surcharge amount will be adjusted to reflect actual revenue losses from the deemed savings achieved, flowing back to customers any over-collections of lost revenues, or recouping from customers any under-collections in lost revenues. UGI Electric Statement No. 3 at 14:19-15:11. In addition to adjusting for reconciliation, the CD Rider surcharge would also adjust to reflect the anticipated “ramp-up” in revenue losses associated with deemed savings from the first year to the second year, and from the second year to the third year of the Plan. *Id.* at 15:13-16:6.

As Mr. McAllister explained, recovery of lost revenues through a reconcilable surcharge such as the CD Rider “is the most administratively efficient and customer-friendly way to recover lost revenues because it does so as they are lost, a process that will occur gradually, reimbursing the Company and charging the customer on a close to real-time basis.” UGI Electric Statement No. 3R at 7:5-8. In Year 1 of the Plan, the average residential customer bill would reflect a \$0.37 charge per month for the CD Rider, and would increase each year to reflect additional projected savings in electric usage and thus associated lost revenues. *See* Exhibit WJM-4. At whatever time in the future UGI Electric would file a base rate case, the CD Rider would be rolled into base rates and, once all reconciliation was completed, set to zero.

Contrary to criticisms by the public advocate witnesses, there is nothing hypothetical or indefinite about lost revenue recovery through the CD Rider. As Mr. McAllister explained, quantified lost revenues are tied directly to electricity savings measures encouraged by the Plan and actually adopted by customers, which necessarily will result in a loss in revenues that correlates to the drop in usage quantified by TRC “deemed savings”:

We propose to quantify the lost revenues associated with the conservation programs that we are proposing on the basis of the deemed savings that correlate with the conservation measures that our customers elect to implement. Whether we recover those lost revenues through our CD Rider or through a regulatory asset, there will be no “second guessing” the level of lost revenues on the basis of an earnings review. Rather, if a UGI Electric customer participates in one of our programs, the deemed savings associated with that activity results in a specified loss in revenue and that specified loss in revenue is the amount we would be entitled to recover.

UGI Electric Statement No. 3RJ at 5:18-6:3.

In the Commission’s *1993 DSM Order*, the Commission expressed concern that lost revenues associated with DSM programs are difficult to measure, *1993 DSM Order* at 641, because, as the ALJ in the case concluded, there were insufficient monitoring and evaluation techniques for verifying that revenue loss. *1993 DSM Order* at 636. The TRC approach embodied in Act 129 and the TRM, however, eliminates this concern. As UGI witness Raab explained, the TRC is the single standard set by the Commission for determining cost-effectiveness. UGI Electric Statement No. 2R at 27:24-26. If a customer adopts a particular program measure, such as installing a CFL or switching from an electric water heater to a natural gas water heater, that conservation measure produces quantifiable electricity “deemed savings” that necessarily translate directly into quantifiable revenue losses. Accordingly, in the 20 years since the Commission considered the question in the *1993 DSM Order*, verification concerns associated with recovering lost revenues through a reconcilable surcharge have been addressed. As a consequence, the reconcilable surcharge approach to lost revenue recovery reluctantly rejected by the Commission in the *1993 DSM Order*, now has all the specificity and support it needs. It, therefore, deserves a second look.

d. Regulatory Asset Recovery is Acceptable

The alternative, regulatory asset treatment, adopted by the Commission in the *1993 DSM Order*, has the distinct disadvantage of imposing lost revenue recovery on customers in a single, and larger, increase in rates. In contrast, surcharge recovery, as Mr. McAllister explained, recovers lost revenues as they are incurred over the 3-year ramp-up period, “a process that will occur gradually, reimbursing the Company and charging the customer on a close to real-time basis.” UGI Electric Statement No. 3R at 7:6-8. UGI Electric, therefore, urges approval of the CD Rider as the best method for recovering lost revenues.

In response to concerns raised by the public advocates, and in recognition of the fact that the Commission already has approved lost revenue recovery through regulatory asset treatment, UGI Electric proposed in rebuttal that it would be willing to accept an appropriately designed regulatory asset for lost revenue recovery in lieu of the CD Rider. UGI Electric Statement No. 3R at 7:10-8:7. Using the same “deemed savings” approach to calculating lost revenues, UGI Electric proposes accrual of a regulatory asset that would reflect actual lost distribution revenues calculated on the basis of actual deemed or calculated electricity savings, as determined on the basis of installed and verified EE&C program participation. *Id.* at 9:3-6. In addition to actual accrued lost revenues, UGI Electric would be permitted to accrue interest, consistent with the approach adopted by the Commission in the *1993 DSM Order*, and recover the regulatory asset beginning with the effective date of UGI Electric’s compliance filing following its next base rate case. *Id.* at 8:18-9:12.

Regulatory asset treatment for lost revenues in the context of an energy conservation plan is a concept that the Commission embraced after full consideration of the issues in its *1993 DSM*

Order. In adopting regulatory asset treatment in the *1993 DSM Order*, the Commission acknowledged concern that regulatory asset treatment would result in a delay in the utilities' recovery of lost revenues, but decided that allowing utilities to recover actual program costs up front through a surcharge, while also allowing them to recover interest on the regulatory asset, would suffice to make the utility "whole" and thereby remove the disincentive for utilities to implement conservation programs:

This [recovery of lost revenues through a regulatory asset] will admittedly result in a delay in the recovery of lost revenues. However, this problem will be mitigated by several factors. First, we are permitting the recovery of other DSM program costs up front through the surcharge, so that only the recovery of lost revenue costs will be delayed. Secondly, we will permit the utilities to use a balancing account for the lost revenue costs, and they will be treated as regulatory assets. . . . we will permit the utilities to accrue interest on these funds at the same annual percentage rate allowed for their individual AFUDC accrual (Allowance for Funds Used During Construction). In this manner, the utilities will be able to recover the time value of money during the deferral period. This will ensure that the utilities will be "made whole" for their DSM lost revenue costs, even though they will not be permitted to collect them up front through the surcharge.

1993 DSM Order at 641.

Accordingly, although UGI Electric continues to believe that gradual recovery of lost revenues on an as-incurred basis through a reconcilable surcharge is far preferable from the perspective of both ratepayers and shareholders than regulatory asset treatment, and further believes that the evolution in conservation plans that has occurred since 1993 resulting in the "deemed savings" measurement technique eliminates any concerns over monitoring and verification of actual revenue losses, UGI Electric would accept regulatory asset treatment as an acceptable alternative to the proposed (and preferred) CD Rider recovery of lost revenues.

2. Elimination or Modification to Fuel Switching Program

The OTS and OCA are highly critical of UGI Electric's inclusion of fuel substitution programs in its EE&C Plan. *See* OCA Statement No. 1 at 8-21; OTS Statement No. 1 at 14-21. OTS' Mr. Granger recommends that UGI Electric be directed to eliminate fuel switching programs altogether. OTS Statement No. 1 at 19. OCA's Mr. Crandall seeks to drastically modify UGI Electric's proposals. OCA Statement No. 1 at 20-21. This vehement opposition, apparently based on the unfounded (and legally irrelevant) concern that fuel switching will enrich UGI Electric's affiliate, PNG, should be disregarded. Fuel switching and, in particular, the substitution of natural gas for electricity in specified applications where the energy conservation benefit is demonstrable, is both permitted by the Commission and consistent with the full-fuel-cycle concept that has been embraced by the Department of Energy ("DOE"), NARUC, the AGA, and the NRDC. UGI Electric Statement No. 2R at 14-18. Elimination or drastic modification to this component of the Plan, as proposed by the OTS and the OCA, has no basis. It would upset the Company's carefully balanced portfolio of energy conservation programs with no identifiable gain in savings. UGI Electric's fuel switching program should be approved as filed, to the extent modified by the Stipulation with SEF.

a. Fuel Switching is Permitted

There can be no dispute that the Commission has expressly permitted fuel switching measures to be included in Act 129 EE&C plans.⁹ In the process of implementing Act 129, the Commission formed a Fuel Switching Working Group ("Working Group") in June 2009, and charged the Group with identifying, researching and addressing "issues related to fuel switching

⁹ The Commission's directives and guidance concerning fuel switching, like most of the guidance provided to date on EE&C plans generally, is, in legal jargon, "binding" as to Act 129 EDCs, but only "persuasive," by virtue of the December 23, 2009 Secretarial Letter, as to smaller EDCs such as UGI Electric.

with the possibility of the inclusion of fuel switching related deemed energy savings in future versions of the TRM.” *Act 129 Fuel Switching Working Group Staff Report*, Docket No. M-00051865, Secretarial Letter dated May 21, 2010 (“Working Group Secretarial Letter”).¹⁰ On April 30, 2010, the Working Group released its Report.¹¹ In its Working Group Secretarial Letter, the Commission adopted the Working Group Report’s recommendations. Those recommendations expressly endorse the use of fuel switching measures in Act 129 EE&C plans. Working Group Report at 6; Working Group Secretarial Letter at 2. The Working Group Report also recommends that fuel switching programs be “fuel neutral.” The Report defines fuel neutrality in context to mean that a plan should include “any fuel switching program that passes a cost-effectiveness test and assists the EDC in meeting its consumption and demand reduction targets.” Working Group Report at 23.

Even before the issuance of the Working Group Report and the Working Group Secretarial Letter in 2010, the Commission had already approved fuel switching programs proposed by PPL Electric, PECO and FirstEnergy. SEF Statement No. 1-S at 3; UGI Electric Statement No. 2RJ at 2-3.

It is self-evident, of course, that inducing customers to switch from electric to natural gas will result in an increase, all things equal, in natural gas usage. As UGI Electric Witness Raab explained:

[T]his gas load increase is at the heart of the full-fuel-cycle concept that has been so widely endorsed. The increase in end-use gas load (and a greater reduction in the energy needed to produce electricity) is the very mechanism that ensures an energy reduction in the Commonwealth as a result of these programs and is widely accepted as appropriate and desirable by such entities as the DOE, NARUC, AGA and the NRDC.

¹⁰ The Working Group Secretarial Letter has been identified and admitted into evidence as OTS Exhibit No. 1, Schedule 4.

¹¹ The Working Group’s Report has been identified and admitted into evidence as OTS Exhibit No. 1, Schedule 3.

UGI Electric Statement No. 2R at 18:7-12.

In light of the Commission's clear endorsement of incorporation of fuel switching programs in EDCs' EE&C plans, it is difficult to understand the hostility to UGI Electric's fuel switching programs reflected in the testimony of OTS witness Granger and OCA witness Crandall.

b. Fuel Switching as Proposed by UGI Electric is Desirable As a Matter of Policy

As filed, UGI Electric's EE&C Plan offers nine discrete energy efficiency, conservation, consumption reduction and education programs. UGI Electric Exhibit 1 at 1. Of these, two programs, Home Energy Efficiency Incentives UGI Electric Exhibit 1 at 57, and Commercial and Industrial Efficiency Incentives UGI Electric Exhibit 1 at 64, involve fuel switching. A review of the details of the actual programs reveals that fuel switching measures are expected to produce slightly less than half of the total of TRC Net Benefits of \$15.2 million, and slightly less than half of the total \$8.6 million in Plan costs over 3 years. These are good programs, with high TRC Benefit/Cost ratios. The electric and natural gas water heater switching program alone accounts for almost a third of the Plan's overall TRC Net Benefits, with a TRC Benefit/Cost ratio of 2.08. UGI Electric Exhibit 1 at 62. On an overall basis, the Plan's TRC Benefit/Cost ratio is 2.04, far in excess of the 1.0 minimum TRC test parameter applied to the larger EDCs' EE&C plans in the Act 129 proceedings. See UGI Exhibit 1 at 70. In short, the fuel switching programs within UGI Electric's overall Plan "pull their weight"; they are substantial contributors to the Plan's overall potential for success (in terms of "deemed savings"), yet do not monopolize the Plan's budget and leave ample room for the Plan's other seven programs.

With respect to the fuel neutrality requirement adopted in the Working Group Report ("Staff recommends that any fuel switching program that passes a cost-effectiveness test and

assist the EDC in meeting the consumption and demand reduction targets should be allowable within and EDC's EE&C plan."), UGI Electric clearly complies. First, as Mr. Raab explained, the TRM identifies only three fuel switching programs: domestic hot water electric to gas; domestic hot water heat pump to gas; and electric heat to gas heat. UGI Electric Statement No. 2RJ at 14:20-26. UGI Electric included all three of these programs in its Plan as filed. Also in the Plan as filed is propane, not as efficient as natural gas, but available as an alternative to the roughly half of UGI Electric customers that do not have access to natural gas distribution service. UGI Electric Statement No. 3R at 6:3-4 ("UGI Electric serves 62,000 electric customers. Of those, 29,000 also receive natural gas service from PNG."). Moreover, based on SEF's TRC calculations for solar thermal water heating (SEF Statement No. 1 at 6-7), UGI Electric entered into a stipulation with SEF to amend the Plan to include that option. As a result, UGI Electric's fuel switching programs presently include every fuel that any party has suggested is cost effective. Accordingly, UGI Electric's plan, as modified, clearly fulfills the Working Group Report's definition of fuel neutrality.

It is true, as the OTS and the OCA suggest, that UGI Electric's affiliate PNG likely will be the beneficiary of some increased gas load revenues. An NGDC benefiting from conversions is the inevitable consequence of any fuel switching program that induces switching from electric to gas. OTS and OCA miss the mark, however, insinuating that the desire to economically benefit PNG is the driving force behind the Plan, or that fuel switching is acceptable unless the switch benefits an affiliate. Fuel switching from electric to natural gas in the applications that UGI Electric has chosen creates major energy conservation benefits; that is all that needs to be considered. Regardless, as Mr. McAllister explained in his rebuttal testimony, the economic

benefit of fuel switching to UGI Electric's affiliate PNG is *de minimus*. UGI Electric Statement No. 3R at 6:1-5.

c. The Specific Criticisms of OTS and OCA are Meritless

i. Fuel Neutrality

As discussed above, UGI Electric's fuel switching programs, as amended by the SEF stipulation to include solar thermal water heating, now contain all alternative energy sources that any party has shown to be cost effective. OTS witness Granger apparently believes, however, that in order to comply with the Working Group Report as adopted by the Commission, an EDC that proposes fuel switching must demonstrate that *all* alternative technologies have been considered. As Mr. Raab explained in his rebuttal, this is an impossible standard, and cannot be what the Working Group Report intended:

I am concerned that OTS' interpretation of the Commission's Secretarial letter as it relates to fuel switching creates an impossible standard for any company to meet in order to offer what are without question, cost effective energy efficiency programs. Specifically, how does any applicant demonstrate that *all* alternative technologies have been considered? In other words, it is easy for parties to speculate that there may be other cost effective technologies, but they should be required to support that position with concrete proposals. This is particularly germane here where there has been little or no evidence presented that viable alternatives exist. The end result is that the OTS would have the Commission throw out these cost-effective programs when no viable alternatives exist.

UGI Electric Statement No. 1 2R at 34:15-35:3.

In any event, parsing of the language of the Working Group Report cannot change the fact that only SEF proposed an alternative fuel type that is demonstrated to be cost effective, and UGI Electric has now included that alternative fuel type in the Plan. As Mr. Raab explained on rebuttal, this suggests "that there are few realistic alternatives . . . for these end uses." UGI Electric Statement No. 2RJ at 14:22-24; *see also* Tr. 39:18-41:21, 43:20-44:8. Accordingly, even though

the Working Group Report and Commission's Secretarial Letter approving it are not binding on UGI Electric, a non-Act 129 company, UGI Electric fully complies anyway. It has "considered [c]ost-effective fuel switching measures" as part of its EE&C Plan, it has addressed "the design of fuel switching programs" through its stakeholder process, and it has invited into the Plan the only additional serious proposal for an alternative fuel source, all as suggested by the Working Group Report and the Commission's Secretarial Letter approving it. OTS' objections on fuel neutrality grounds should thus be disregarded.

ii. Incentive Levels

UGI Electric has proposed incentive payments to customers who switch from electric for water heating and clothes drying that equal 100% of the anticipated incremental cost the customer will incur in making the fuel switch, and an incentive payment to customers who switch from electric for home heating that equals 75% of the anticipated incremental cost the customer will incur in making the fuel switch. UGI Electric Exhibit 1 at 57. For home heating switches only, UGI Electric proposes that the "incremental cost" include infrastructure costs associated with necessary line extension and internal piping, capped at 75% of the average level of such costs, \$1,500.00. *Id.*; UGI Electric Statement No. 2RJ at 9:1-15; Tr. 59-71.

OCA witness Crandall proposes a steep reduction in these incentive payments to 50% of incremental cost, and proposes to exclude entirely infrastructure costs associated with heating conversions. OCA Statement No. 1 at 20:13-15. OTS witness Granger, as an alternative to his primary recommendation to eliminate fuel switching altogether, recommends an even more drastic reduction to incentive payments to 30% of incremental cost. OTS Statement No. 1 at 20:1-7. Neither provides a reasoned basis for these arbitrary reductions.

Admittedly, much judgment is involved in attempting to predict what it will take to persuade a customer to switch from an electric water heater, clothes dryer or furnace. There is no direct experience with other plans that UGI Electric can use as a guide or benchmark. UGI Electric has given considerable thought to the level of incentives that will be necessary to induce customers to switch. As UGI Electric Witness Raab explained, the Company considered a variety of factors, mindful that under the status quo consumers rarely convert from an electric appliance to another fuel such as natural gas, even though the savings in energy costs alone could justify a switch:

The Company's fuel switching programs are innovative and unique. While one may be able to borrow information and data about traditional conservation and energy efficiency programs from other utilities in other jurisdictions, this is not the case with the group of fuel switching programs included in UGI Electric's Plan. We do not precisely know the level of incentive required to move this market in a significant way.

UGI Electric does know, however, that the likelihood of a customer who does not already have natural gas service converting from an electric appliance to a natural gas appliance is small, because this rarely occurs in practice. On the other hand, UGI Electric's customers regularly purchase high efficiency equipment. These observations suggest that larger incentives will be required to move the market from electric appliances to natural gas appliances than will be required to obtain participation in traditional conservation and energy efficiency programs, and explains why the incentives associated with the Company's fuel switching programs have been set at higher levels than the incentives associated with the Company's more traditional conservation and energy efficiency programs.

UGI Electric Exhibit No. 2RJ at 9:18-10:10.

Ultimately, there is no way to know precisely what incentive amount is required in order to induce a customer to switch. UGI Electric wants the Plan to succeed, and views "a successful roll-out of these [fuel switching] programs to be particularly important." UGI Electric Statement No. 2R at 21:17-18. As Mr. Raab explained, to accomplish this goal, it makes sense to err if at

all on the side of giving an incentive that turns out in retrospect to be too large, which the Company can scale back if it meets with too much success:

In light of this, UGI Electric believes it is important that these programs, which have not been offered by the larger EDCs, get off to a successful start. The best way to ensure early success is by offering large incentives for customers to participate. If these incentives turn out to be larger than necessary, they can always be reduced as UGI Electric gains more experience with them.

Id. at 21:18-230.

Given that the Company has built its Plan from the ground up, filed it on a voluntary basis, has every reason to want it to succeed, and will be closely monitoring its implementation and the need for mid-course corrections, it deserves the benefit of any doubt on this issue. The size of the incentive needed to induce a customer to switch is a critical unknown; the only thing we know for sure is that the incentive will need to be very substantial for the program to be successful, at least initially.

With respect to the disputed \$1500 incentive for infrastructure costs for space heating conversions, there is no basis for Mr. Crandall's insistence on removing the incentive. The cost of running natural gas service to a home that presently has none obviously is an "incremental" cost that is necessary in order to achieve the increased efficiency associated with a conversion from electric space heater to natural gas. Mr. Crandall himself recognizes in his testimony that "incremental" costs typically are included as program costs related to implementation of increased efficiency. OCA Statement No. 1 at 10:5-7. Accordingly, as Mr. Raab explained, UGI Electric's inclusion of an allowance of the average line extension cost is properly included as part of the incentive payment. UGI Electric Statement No. 2R at 20:12-21; Tr. 68:6-70:11.

OCA witness Crandall's opposition to UGI Electric's fuel switching proposal seems to be based more on unwarranted bias against fuel switching (or fuel switching where an affiliate is a

potential beneficiary) than on a measured assessment of the fuel switching programs UGI Electric has proposed. As Mr. Raab explained, UGI Electric's fuel switching programs are highly effective and should be judged on their considerable merits. They will actually do a better job of conserving electricity and energy than traditional programs that are designed primarily to encourage customers to continue to use electricity for the same applications at reduced levels:

By allowing companies to propose fuel switching programs, the Commission has explicitly recognized that these kinds of programs save electricity and improve the efficiency with which energy is utilized. Indeed, the Company's filing shows that fuel switching programs can save *more* electricity, can save *more* energy and can be *more* cost effective than the traditional programs that Mr. Crandall obviously prefers.

UGI Electric Statement No. 2RJ at 11:13-18 (emphasis original).

iii. Air Conditioning

OCA witness Crandall initially criticized UGI Electric's Plan based on the misunderstanding that UGI Electric is proposing to condition its incentive payment for a gas furnace conversion on the customer installing electric air conditioning. OCA Statement No. 1 at 18:1-2 ("the electric central air conditioning components should not be a requirement of the space heat fuel switching"). UGI Electric has proposed no such requirement, of course, as explained in detail by Mr. Raab. The cost of air conditioning is included in determining the cost-effectiveness of UGI Electric's space heating fuel switching program because the evaluation assumes that the natural gas furnace will be displacing an electric source heat pump that provides both heating and cooling. Accordingly, the only way to evaluate a program that replaces a heat pump with a natural gas furnace is to include the costs of providing cooling to the home, which would be done with a central air conditioner. UGI Electric Statement No. 2R at 22:10-20. However, whether the benefit-cost evaluation assumes that the customer installs an air conditioning unit or does not, the program does not encourage additional air conditioning load,

because, as explained by Mr. Raab, “it does not provide any incentive to customers to create that load.” UGI Electric Statement No. 2RJ at 12:17-18. The facts are that if a customer installs electric air conditioning after switching from an electric heat pump (or any other electric space heating option) to natural gas, the customer’s incentive payment for the furnace conversion pays nothing for the installation of air conditioning. Separately, if the customer decides to install air conditioning, and chooses a high efficiency electric air conditioning unit, a separate program within the Plan pays an incentive for that electricity-saving choice. Mr. Crandall’s point on this topic is thus a non-issue.

iv. High Efficiency Devices

OCA witness Crandall also proposes to modify UGI Electric’s Plan so that no incentive payment may be offered unless the alternate fuel equipment selected (*e.g.*, a natural gas furnace) is a “high efficiency” device. OCA Statement No. 1 at 20:16. As Mr. Raab explained in rebuttal, however, the purpose of UGI Electric’s Plan is to incentivize customers to reduce their *electricity* consumption, which will occur at the same level regardless of whether the customer switches to a standard efficiency or high efficiency natural gas appliance. There is no basis for requiring UGI Electric’s customers to pay incentives for devices that will decrease *natural gas* consumption that is the responsibility of the natural gas distribution company:

If UGI Electric were to pay UGI Penn Natural Gas customers to install high efficiency natural gas appliances, this would be a clear case of UGI Electric subsidizing the conservation and energy efficiency activities of UGI Penn Natural Gas. This is because once the electric load has been removed from the UGI Electric system, UGI Electric customers get no additional electric load reduction from the more costly investment in a high efficiency gas appliance, and UGI Electric customers should not be expected to pay for that.

UGI Electric Statement No. 2R at 23:15-21.

On a related point, the combination of modifications proposed by Mr. Crandall could create havoc with the Plan. Mr. Crandall has proposed *both* a “high efficiency” equipment requirement *and* a steep reduction in incentive payments. The Commission should not make either of the modifications suggested, but if it imposes the “high efficiency” requirement it must avoid reducing the incentive payments, because the cost of high efficiency equipment is generally much higher than standard equipment. As Mr. Raab elaborated:

I would also note that, if the installation of high efficiency appliances were to be a condition of participation in the Company’s fuel switching programs, this would suggest that higher incentives to pay for the increased cost to participate would be warranted. It would certainly not be appropriate to impose this additional program restriction *and* lower incentives.

UGI Electric Statement No. 2RJ at 13:17-21. Adding such a burden to the Plan would simply jeopardize the Plan’s success needlessly.

(v) Low Income Customers and Fuel Switching

Finally, OCA witness Crandall recommends that a variety of restrictions and special exceptions attach to fuel switching by low income customers. OCA Statement No. 1 at 20:8-16. OCA’s suggestions are unworkable, discriminatory, and should be rejected.

By way of background, UGI Electric already has an array of programs to assist low income customers, including its Customer Assistance Program and its Low Income Usage Reduction Program. These existing programs have demonstrated that the administrative costs of identifying “low income” customers in order to enroll that subset of low income customers into the programs is very high. What the OCA is suggesting would require UGI Electric to identify all other low income customers and then separately implement a different set of EE&C program criteria specifically for low income customers. Such an undertaking will add significantly and

prohibitively to the administrative costs of the EE&C Plan. UGI Electric Statement No. 2R at 25:19-26:2.

With respect to the EE&C Plan's fuel switching programs, UGI Electric has proposed to treat low income customers in the same way it treats all other customers, providing them with the same incentive payments, and offering them the same opportunity to switch to any eligible alternative fuel. The OCA proposes to use one set of incentive payments for low income customers and a lower set of incentives for all other customers, and also to restrict the ability of low income customers to fuel switch so that they could not switch to either solar thermal water heating or propane, but only to natural gas, a regulated fuel.

There is no reason to discriminate either in favor of or against low income customers in the way the OCA proposes. The OCA's proposal is unnecessary and unworkable, and should be rejected. All customers, including low income customers, would be better served under UGI Electric's Plan as proposed.

3. Inclusion of Peak Load Reduction Targets

The Secretarial Letter expressly requires that small EDCs filing a voluntary EE&C plan propose reductions either to "consumption" or "peak demand," but there is no requirement for both: "Each petition must contain at least the following: . . . (3) proposed energy consumption *or* peak demand reduction objectives *or* both." *Id.* (emphasis added). UGI Electric's Plan proposes consumption reduction and, consistent with the actual levels required of large EDCs in Act 129,¹² a reduction target of 3% over the first three years. 66 Pa.C.S. 2806.1(c)(2). Moreover, although there is no requirement that UGI Electric additionally propose a peak load reduction target, the Plan goes beyond the requirements of the Secretarial letter and identifies anticipated

¹²**Error! Bookmark not defined.** 66 Pa.C.S. 2806.1(c)(2).

peak load reductions that are anticipated to occur as a result of implementation of the Plan's measures. UGI Electric Statement No. 1 at 4:4-8; UGI Electric Exhibit 1 at 2.

Unsatisfied with reduction targets that already surpass the Commission's requirements, OTS' Mr. Granger takes the position that UGI Electric should do more. Specifically, he proposes that UGI Electric be required to restructure the Plan to include new programs designed to "achieve peak load reductions that will effectuate a reduction in the greater electric power grid peak load demand for the 100 hours of highest demand." OTS Statement No. 1 at 21:20-22:2. As UGI Electric Witness Raab explained on cross-examination, reallocation of Plan resources in such a fundamental way is a major task to undertake at this stage of Plan development. Tr. 46:19-58:14. Moreover, the Plan's limited budget (which Mr. Granger separately opines should be cut) is not designed to accommodate expensive peak day reduction measures, which presumably would include interval meters and time-of-use billing systems.

Given that UGI Electric's Plan already complies with the Commission's directives on this issue, and that UGI actually anticipates peak load reductions under the Plan as proposed, OTS' proposed peak load target should be rejected.

4. Reduction in Total Plan Expenditure Levels

OTS and OSBA assert that the expenditure level used by the Company is too high. OTS Statement No. 1 at 24:5-8 ("I recommend that the Commission require UGI Utilities to resubmit its voluntary EE&C Plan with a proposed expenditure limit of 1.2% (60% of 2%) of its total annual revenue as of December 31, 2006"); OSBA Statement No. 1 at 9:2-3 ("I suggest that average annual spending over the three-year Plan should be limited to two percent of annual revenues . . .").

In response to the OSBA's proposal, Mr. Raab pointed out that the Plan is substantially consistent with Act 129's 2% cap on expenditures, with the exception of additional overhead

expenses that the Company will incur in delivering the programs to customers, which amount to a mere 0.2% above the recommended cap. UGI Electric Statement No. 2R at 6:14-20.

The OTS, for its part, has concocted an arbitrary methodology for calculating what it believes should be the cap on expenditures for the Plan. OTS Statement No. 1 at 24:3-8. It mistakenly assumes that, because UGI Electric has a smaller customer base than the large EDCs subject to Act 129, the 2% limit established by Act 129 somehow does not adjust to accommodate the smaller customer base. As Mr. Raab explained, however, the formula that Mr. Granger proposes is without basis and is one which, if applied similarly to very large EDCs, would result in budgets that are 30% of annual revenues. UGI Electric Statement No. 2R at 36:18-23. OSBA's Mr. Knecht was similarly critical of Mr. Granger's proposal. OSBA Statement No. 2 at 2:8-29. Obviously, the 2% guideline is intended to produce a budget proportional to each EDC's revenues, so that all, regardless of size, are spending the same proportional amount. There is simply no basis for Mr. Granger's much lower proportional amount for UGI Electric.

5. Recovery of Plan Costs by Customer Class

As filed, UGI Electric proposed to recover Plan costs from two customer classes: residential and non-residential. UGI Electric Statement No. 3 at 8:12-21; *see also* UGI Exhibit 1 at 70. OSBA's Mr. Knecht raised concerns regarding the aggregation of the non-residential classes, and requested that the Commission modify the Plan as filed to reflect large and small/medium rate class groups, which would each be individually responsible for their share of program costs. OSBA Statement No. 1 at 12:3-7. In rebuttal, the Company expressed its willingness to establish two non-residential rate classes as proposed by Mr. Knecht, which will lend more precision to the rate design of the Plan, while avoiding cross-subsidization between

the large and small/medium commercial classes. UGI Electric Statement No. 3R at 10:13-18. Therefore, this concern has been resolved and is no longer at issue.

6. Expansion or Modification of Customer Education

The OCA has raised concerns over whether the Plan sufficiently educates consumers to inform their energy usage. Specifically, the OCA believes that consumers need more information as to the level of consumption resulting from plasma televisions and home entertainment systems, and urges UGI Electric to address this knowledge gap through customer education components of its Plan. OCA Statement No. 1 at 8:11-14 (“UGI-Electric’s Plan should specifically address this in marketing and implementation activities and include public education activities, with special emphasis on energy consumption of home entertainment systems, TV’s and phantom power loads as it implements its EE&C [Plan].”).

While the OCA’s suggestion is well-intentioned, there are practical issues it overlooks. As UGI Electric Witness Paul Raab points out in his testimony, UGI Electric does not have the luxury of an unlimited budget, and it must use its dollars on an array of well-rounded programs that together meet the cost-effectiveness test as determined by the TRC calculations. UGI Electric Statement No. 2R at 12:16-23. As Mr. Raab points out, “[t]he Company’s Plan relies on net TRC benefits to support activities such as education to which it is difficult, if not impossible, to ascribe any energy savings.” *Id.* at 12:19-21. UGI Electric must ensure a strong blend of programs, while still achieving cost-effectiveness goals. The Plan as presented by UGI Electric achieves these goals, without expansion of its consumer education program.

7. Funding Percentage for Residential Lighting

The Plan as filed provides for the distribution and discount of ENERGY STAR-qualified CFL bulbs through its Compact Fluorescent Lighting Campaign, targeting residential and residential low-income customers. UGI Electric Exhibit 1 at 23-28. No party criticized the

program, but OCA suggests that it be doubled. OCA Statement No. 1 at 6:9-10 (“I recommend that the number of bulbs proposed for this program be doubled . . . this program is expected to pass the TRC screens with an overall 5.36 TRC value”). While UGI Electric does not dispute that the CFL program achieves overall TRC results that exceed the minimum threshold, it is not the most cost effective of the proposed programs the Company has included in its Plan. UGI Electric Statement No. 2R at 11:3-4. Therefore, even if TRC values were the only consideration dictating where additional funding should be directed, the CFL program would not be the program to be doubled. This is not, however, the only consideration.

As Mr. Raab points out, the Company must operate within a fixed budget, and “Mr. Crandall’s suggestion to expand the scope of the lighting program can only be achieved by sacrificing the breadth of program offerings” that were presented in the Plan as filed. UGI Electric Statement No. 2R at 10:8-10. The Company has expressed its willingness to consider Mr. Crandall’s suggested expansion as the Plan progresses, should participation outcomes indicate that certain programs should be trimmed or removed altogether. At this early stage, however, it is premature to force such a reallocation. UGI Electric Statement No. 2R at 10:6-13.

Aside from the budgetary limitations that control the number and level of programs that can be offered under the Plan, free ridership concerns give UGI Electric pause when faced with the suggestion to double its CFL program. Due to the passage of federal legislation, EISA 2007, consumers likely will be required to move toward more efficient lighting technologies without the need for incentives, such as that offered by the CFL program. The Commission clearly considers free ridership relevant in determining the cost-effectiveness of programs; it devoted a section of its TRC Order to the estimation of net-to-gross (“NTG”) ratios, a measure of free-ridership, and indicated its intent to convene a stakeholder process to examine the issues

associated with developing a NTG adjustment.¹³ In order to accommodate for this factor in the implementation of its CFL Campaign, UGI Electric has proposed to rely upon Commission-approved estimates of free-ridership to determine when incentives provided by the CFL program are no longer cost-effective. UGI Electric Statement No. 2R at 12:2-4. To redirect funds from another program to the CFL Campaign now, when the cost-effectiveness of the program from a long-term perspective is questionable, hardly seems prudent. Rather, the Company's more modest program should be adopted as filed without modification.

8. Modification to Commercial Lighting

The Commercial and Industrial ("C&I") Custom Incentive Program allows for the replacement of energy efficient equipment, including lighting measures, applicable to C&I customer classes where the proposed replacements are not eligible for prescriptive rebates elsewhere under the Plan, and where the measures are substantiated through a technical analysis and approved. UGI Electric Exhibit No. 1 at 42-49. This portion of the Plan received no direct criticism from the parties, although the OCA found fault in the Plan generally for its lack of prescriptive lighting programs dedicated to the C&I classes. OCA Statement No. 1 at 5:16-18 ("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."). This argument discounts the fact that, as Mr. Raab points out, the very type of prescriptive lighting measures that Mr. Crandall cites are available under the C&I Custom Incentive Program as currently proposed. UGI Electric Statement No. 2R at 8:13-18.

Mr. Crandall illustrated his suggested prescriptions by pointing out as an example the Wisconsin Focus On Energy approach. OCA Statement No. 1 at 5:20-22; OCA Exhibit GCC-2. As observed by OSBA witness Knecht, however, Mr. Crandall did not provide any direct

¹³ TRC Order at 27.

evidence of the cost-effectiveness of the prescriptive measures he proposed to contrast against the evidence supplied by the Company. OSBA Statement No. 2 at 1:23-26. In fact, Mr. Raab explains that prescriptive rebates may not be as effective as Mr. Crandall believes them to be.

UGI Electric believes that the customers are better equipped than the Company to make determinations as to what technologies best meet each customer's needs individually, and the custom program proposed by the Plan allows the greatest flexibility to the consumer in doing so. UGI Electric Statement No. 2R at 8:24-27. In making such determinations, energy saving measures are often taken "after a detailed study of lighting needs that is performed by lighting experts, who have every interest in achieving the greatest savings with no compromise in either the quantity or quality of light provided. These experts know the level of incentives that are provided by local utilities and design their packages accordingly." UGI Electric Statement No. 2R at 9:5-9.

Mr. Raab has also presented the separate, yet equally compelling, point that the advent of federal laws and emerging technology presents the likelihood that new lighting technologies will be available during the course of implementation of the proposed Plan. UGI Electric Statement No. 2R at 9:13-21. By maintaining the program's existing custom feature, as opposed to the OCA's recommended prescriptive measures, the Company is providing the best opportunity to program participants to take full advantage of the intended benefits of the Plan to achieve efficiency, both from a cost and energy standpoint. Therefore, prescriptive measures should not be forced into the Plan, where they are likely to pull valuable and finite dollars away from programs which may yield a greater benefit.

9. Notice Period for Change in Plan Rider Charges

The Plan, as proposed, calls for the flexibility to make interim filings to the EEC and CD Riders in order to accommodate significant deviations in over or under recovery, which would

become effective upon one day's notice. UGI Electric Exhibit No. 1 at 77-78. The OCA took issue with the reasonableness of making upward adjustments to the riders with only a single day's notice, and instead suggested a minimum 30 day's notice period where increases to the riders are sought. OCA Statement No. 1 at 22:9-11 ("I would suggest that at least 30 days be required before UGI Electric could increase its energy efficiency and conservation rider."). UGI Electric indicated in testimony a willingness to address the OCA's point, agreeing to provide 30 days' notice of *any* adjustments, whether upward or downward, for both riders. UGI Electric Statement No. 3R at 10:5-7. As neither the OCA nor other parties revisited this aspect of the Plan, it appears this issue is resolved.

10. Necessity for Prudence Review of Plan

The OSBA openly recognizes the fact that the Act 129 mandates and associated penalties do not apply to UGI Electric, as a small EDC, yet simultaneously attempts to circumvent this point by imposing upon UGI Electric a prudence review requiring the Plan to be held to the standards associated with large EDCs' plans under the Act. OSBA Statement No. 1 at 9:9-13 ("UGI Electric should be required to demonstrate in each annual review of the Plan's performance that the overall cost-effectiveness of its load reductions is comparable to that achieved by the larger EDCs. To the extent that the programs do not meet this cost-effectiveness standard, excess costs should be subject to exclusion from the EEC Rider cost basis."). The legislature, and indeed the Commission itself, elected to refrain from imposing such a burden on the smaller EDCs, by exempting them from Act 129 and by providing separate guidance to inform their voluntary plan development process through issuance of the Secretarial Letter. Surely the conscious differentiation in application of the Act 129 standards as between large and small EDCs indicates that neither the General Assembly nor the Commission intends small EDCs to be held to punitive standards.

The OSBA recommendation would not only impose a burden upon UGI Electric that was never intended, but it would also impose a greater burden than that currently carried by the large EDCs, as they are not required to undergo prudence reviews that rise to the level of pitting their plans directly against those of their larger EDC counterparts. As Mr. Raab points out, the value of such a review has not even been considered by the other parties or this Commission. UGI Electric Statement No. 2R at 6:21-23. In fact, as Mr. Raab further explains, there is a strong likelihood that imposing such a stringent burden upon the small EDCs' voluntary plans may chill the desire of any small EDC to propose a voluntary plan, especially in light of the significant deterrents. UGI Electric Statement No. 2R at 6:23-25.

As the Plan outlines in Section 5, the Company has provided for an extensive evaluation process, which incorporates quality assurance and evaluation, audit and verification processes, and measurement of outcomes. *See* UGI Electric Statement No. 1 at 8:22-10:3; *see also* UGI Electric Exhibit 1 at 74. This evaluation will be performed at various stages of program implementation, with the Company conducting a self-review annually. *See* UGI Electric Exhibit 1 at 75. A report detailing this self-review will be provided to the Commission within three months following the end of each program year. *Id.* By suggesting an additional formal prudence review, the OSBA attempts to hold the Company to a more stringent standard of review than that imposed upon the large EDCs by Act 129. In fact, the Company's proposed review process is no different than the self-review required by Act 129 on an annual basis. 66 Pa.C.S. § 2806.1(b)(1)(i)(J). To require more intense scrutiny of a small EDC's voluntary plan is simply unnecessary, and the proposal should be rejected.

11. Applicability of the Plan to Small Business Customers

The OSBA attempts to essentially "opt-out" of the EE&C Plan by requesting that the Commission set the non-residential EEC Rider charge to zero, and assign the full cost of non-

residential programs to non-residential program participants. OSBA Statement No. 1 at 7:23-24. OSBA's point seems to be that EE&C plans rely on cross-subsidization, and since the legislature has not required small EDCs to file a plan, the Commission should not encourage them to. As Mr. Raab points out in his rebuttal testimony, Mr. Knecht's criticism of the Plan in this respect is not really a criticism specific to the Company's Plan, but rather a criticism directed more generally at Act 129 and the TRC methodology. UGI Electric Statement No. 2R at 4:19-20. Whatever validity his criticisms have in the abstract, they are out of step with the notions of utility-sponsored EE&C programs that the Commission has embraced. Mr. Knecht, in fact, recognizes this point in his own testimony by pointing out that the Commission has interpreted Act 129 to permit cross-subsidization of program costs and benefits. OSBA Statement No. 1 at 8:7-9.

While UGI Electric does not deny that its Plan permits a certain amount of cross-subsidization, it is important to recognize that the Plan was proposed to benefit and include all customer classes. Allowing small business customers, or any other customer segment, to "opt out" of the benefits and burdens of Plan participation would destroy the fabric of EE&C plans generally. As Mr. Raab explains, "[t]he effect of Mr. Knecht's . . . recommendation is to deny UGI Electric the opportunity to implement its EE&C Plan, because it reflects a continuation of the *status quo*. The Commission issued its Secretarial Letter encouraging small EDCs like UGI Electric to file EE&C plans because it obviously believed that the *status quo* was unacceptable" UGI Electric Statement No. 2R at 6:8-10.

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

SEF presented testimony in support of the addition of solar thermal water heating to the Plan, and provided the necessary TRC calculations to demonstrate its cost effectiveness. After

reviewing SEF's calculations, the Company reached a Stipulation with the SEF, agreeing to adopt solar thermal water heating as a technology to be recognized and incentivized under the Plan.

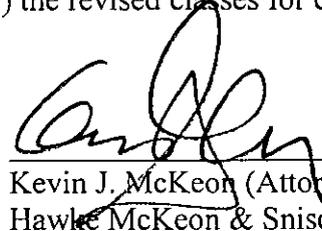
Unsatisfied, OTS seeks inclusion of all Tier I resources, even though neither OTS nor any other party made any effort to demonstrate that Tier I resources other than solar thermal are cost effective. UGI Electric Statement No. 2R at 34-35. For the reasons discussed *supra* concerning fuel neutrality, OTS' position at this issue lacks merit and should be rejected.

13. Other Modifications

UGI Electric will respond as necessary to other issues raised in the Initial Briefs of other parties.

V. CONCLUSION

UGI Electric respectfully requests that the Commission approve the Plan as filed, amended to reflect: (1) the addition of solar thermal water heating as per the SEF stipulation; (2) the revised 30-day notice provisions; and (3) the revised classes for cost on lost revenue rider recoveries.



Kevin J. McKeon (Attorney ID No. 30428)
Hawke McKeon & Sniscak LLP
100 N. 10th Street
Harrisburg, PA 17101
Tel.: (717) 236-1300
E-mail: kjmckeon@hmslegal.com

Mark C. Morrow (Attorney ID No. 33590)
Melanie J. Elatieh (Attorney ID No. 209323)
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Tel.: (610) 768-3628
Fax.: (610) 992-3258
E-mail: morrowm@ugicorp.com
E-mail: melanie.elatieh@ugicorp.com

Dated: June 2, 2011

Counsel for UGI Utilities, Inc., Electric Division

RECEIVED

2011 JUN -2 PM 4: 12

HA PUC
SECRETARY'S BUREAU

ATTACHMENT A

RECEIVED

JUN - 2 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

UGI ELECTRIC'S
PROPOSED FINDINGS OF FACT

1. On November 9, 2010, UGI Electric filed with the Commission its Petition seeking approval of its proposed EE&C Plan pursuant to 52 Pa. Code §5.41 (pertaining to petitions generally) and the Commission's Secretarial Letter of December 23, 2009 ("Secretarial Letter") (relating to voluntary filings of energy efficiency and conservation ("EE&C") plans by electric distribution companies ("EDCs") with fewer than 100,000 customers).
2. The filing consisted of: 1) a Petition requesting approval of UGI Electric's EE&C Plan and the associated proposed EEC and CD Riders; 2) UGI Electric's EE&C Plan (UGI Electric Exhibit No. 1); 3) *pro forma* tariff pages for the EEC and CD Riders; and 4) three statements of direct testimony and associated exhibits in support of the EE&C Plan.
3. The Plan was developed through a process that included two widely-attended meetings with stakeholders to gather their input regarding the Plan and to offer opportunities for them to participate in the Plan development process. UGI Electric Exhibit 1 at 3.
4. All UGI Electric stakeholders were served with notice of the filing and were provided with directions to access the Plan by letter on November 9, 2010.
5. The Office of Trial Staff ("OTS") (through an Answer to Petition), Office of Consumer Advocate ("OCA") (through a Notice of Intervention, Public Statement and Answer), Office of Small Business Advocate ("OSBA") (through a Notice of Intervention, Notice of Appearance, Public Statement and Answer) and the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF") (through a Petition to Intervene) became active parties to this proceeding.
6. Aside from the public advocates and SEF, no stakeholder or other potentially interested party expressed a desire to participate.

7. UGI Electric's EE&C Plan offers nine discrete energy efficiency, conservation, consumption reduction and education programs. UGI Electric Exhibit 1 at 1.
8. The Plan's energy efficiency and conservation measures cover a broad range, and are designed to meet the needs of all classes of customers while simultaneously achieving energy consumption reduction targets of 1% per year during the life of the Plan, all of which will be accomplished in a cost-effective manner. UGI Electric Exhibit 1 at 2.
9. The Plan is designed to expend approximately 2% of annual revenues for the annual period ended May 31, 2008, which equates to a total Plan expenditure of approximately \$8.6 million over three years. UGI Electric Exhibit 1 at 2.
10. The Plan provides incentives to achieve energy consumption reductions for low-income customers. UGI Electric Exhibit 1 at 2.
11. The Plan anticipates the use of internal Company staff and Conservation Service Providers as necessary to implement programs, monitor progress, and verify Plan results. UGI Electric Exhibit 1 at 2.
12. Analysis of the Plan in its entirety indicates a TRC benefit-to-cost ratio of nearly 2.04 for the proposed portfolio, with the complement of Residential Programs reflecting a TRC Benefit/Cost Ratio of 2.5 and the Commercial and Industrial Programs a ratio of 1.49. UGI Electric Exhibit No. 1 at 70.
13. The Plan includes the EEC Rider, a reconcilable surcharge billed to all customers pursuant to Section 1307 of the Public Utility Code to recover Plan costs.
14. The Plan includes the CD Rider, a reconcilable surcharge billed to all customers pursuant to Section 1307 of the Public Utility Code to recover revenues that will be lost when the Plan's programs are implemented and energy savings achieved under the "deemed savings" method of measuring conservation success. UGI Electric Statement No. 3 at 13:10-13.
15. By Year 3 of the Plan, UGI Electric expects annual revenue losses to exceed \$1 million, with the cumulative revenue loss at that point close to \$2 million. UGI Electric Statement No. 3R at 3:2-4.
16. Quantification of lost revenues is tied directly to electricity savings measures encouraged by the Plan and actually adopted by customers, which necessarily will result in a loss in revenues that correlates to the drop in usage quantified by TRC "deemed savings." UGI Electric Statement No. 3RJ at 5:18-6:3.
17. Lost revenues of the magnitude anticipated would cause UGI Electric's ROE to fall to 10%. UGI Electric Statement No. 3RJ at 3:5-13.
18. If UGI Electric were to implement the Plan without a lost revenue recovery mechanism it would significantly accelerate the need for a base rate case. UGI Electric Statement No. 3RJ at 7:1-14.

19. Pro forma tariff pages to implement the proposed CD Rider are attached to UGI Electric's EE&C Plan as Appendix A. Exhibit WJM-4 shows the calculation of the proposed annual CD Rider.
20. In addition to adjusting for reconciliation, the CD Rider surcharge would also adjust to reflect the anticipated "ramp-up" in revenue losses associated with deemed savings from the first year to the second year, and from the second year to the third year of the Plan. UGI Electric Statement No. 3 at 15:13-16:6.
21. In Year 1 of the Plan, the average residential customer bill would reflect a \$0.37 charge per month for the CD Rider, and would increase each year to reflect additional projected savings in electric usage and thus associated lost revenues. Exhibit WJM-4.
22. At whatever time in the future UGI Electric would file a base rate case, the CD Rider would be rolled into base rates and, once all reconciliation was completed, set to zero.
23. Recovery of lost revenues through a reconcilable surcharge such as the CD Rider would recover lost revenues as they are lost, a process that will occur gradually, reimbursing the Company and charging the customer on a close to real-time basis. UGI Electric Statement No. 3R at 7:5-8.
24. As an alternative to the CD Rider the Company prefers, the Company has proposed and is willing to accept regulatory asset treatment for lost revenues.
25. Recovery of lost revenues through a regulatory asset would defer an increase in recovery until the Company's next base rate case, and the increase would occur in a single step at a higher level than if recovered gradually through the CD Rider.
26. In addition to actual accrued lost revenues, UGI Electric proposes to accrue interest on lost revenues, consistent with the approach adopted by the Commission in the 1993 *DSM Order*, and recover the regulatory asset beginning with the effective date of UGI Electric's compliance filing following its next base rate case. UGI Electric Statement 3R at 8:18-9:12.
27. The Commission has permitted fuel switching measures to be included in Act 129 EE&C plans.
28. The Fuel Switching Working Group recommendations expressly endorse the use of fuel switching measures in Act 129 EE&C plans. *Act 129 Fuel Switching Working Group Staffing Report*, Docket No. M-00051865, Secretarial Letter dated May 21, 2010.
29. Of the nine programs UGI Electric has included in its Plan, two programs, Home Energy Efficiency Incentives UGI Electric Exhibit 1 at 57, and Commercial and Industrial Efficiency Incentives UGI Electric Exhibit 1 at 64, involve fuel switching.
30. The Plan's fuel switching measures are expected to produce slightly less than half of the total of TRC Net Benefits of \$15.2 million, and slightly less than half of the total \$8.6 million in Plan costs over 3 years.

31. Fuel neutrality is defined in the Working Group Report to mean that a plan should include “any fuel switching program that passes a cost-effectiveness test and assists the EDC in meeting its consumption and demand reduction targets. Working Group Report at 23.
32. UGI Electric included in the Plan as filed all three programs identified in the TRM for fuel switching measures. UGI Electric Statement No. 2RJ at 14:20-26.
33. As amended to include solar thermal water heating, UGI Electric’s fuel switching programs now include every fuel that any party has demonstrated to be cost effective.
34. The economic benefit of fuel switching to UGI Electric’s affiliate PNG is expected to be no more than 10% of UGI Electric’s lost revenues during the first year of the Plan. UGI Electric Statement No. 3R at 6:1-5.
35. UGI Electric has proposed incentive payments to customers who switch from electric for water heating and clothes drying that equal 100% of the anticipated incremental cost the customer will incur in making the fuel switch UGI Electric Exhibit 1 at 57, and an incentive payment to customers who switch from electric for home heating that equals 75% of the anticipated maximum incremental cost the customer will incur in making the fuel switch. (*Id.*)’ For home heating switches only, UGI Electric proposes that the “incremental cost” include infrastructure costs associated with necessary line extension and internal piping, capped at the average level of such costs, \$1,500.00. *Id.*; UGI Electric Statement No. 2RJ at 9:1-15; N.T. 59-71.
36. Presently, without any added incentive payment, consumers rarely convert from an electric appliance to another fuel such as natural gas, even though the savings in energy costs alone could justify a switch. UGI Electric Exhibit No. 2RJ at 9:18-10:10.
37. There is no way to know precisely what incentive amount is required in order to induce a customer to switch. UGI Electric wants the Plan to succeed, and views “a successful roll-out of these [fuel switching] programs to be particularly important.” UGI Electric Statement No. 2R at 21:17-18.
38. The Plan is more likely to succeed if the Company starts out giving incentives that turn out in retrospect to be too large, which the Company can scale back if it meets with too much success, than if the incentives initially offered are too low and need to be increased in order to induce customers to fuel switch.
39. Under the Plan, if a customer installs electric air conditioning after switching from an electric heat pump (or any other electric space heating option) to natural gas, the customer’s incentive payment for the furnace conversion pays nothing for the installation of air conditioning.
40. The purpose of UGI Electric’s Plan is to incentivize customers to reduce their electricity consumption, which savings will occur at the same level regardless of whether the customer switches to a standard efficiency or high efficiency natural gas appliance.

41. UGI Electric's Plan proposes consumption reduction and, consistent with the actual levels required of large EDCs in Act 129, a reduction target of 3% over the first three years. 66 Pa.C.S. 2806.1(c)(2).
42. The Plan identifies peak load reductions that are anticipated to occur as a result of implementation of the Plan's measures. UGI Electric Statement No. 1 at 4:4-8; UGI Electric Exhibit 1 at 2.
43. The Plan is substantially consistent with Act 129's 2% cap on expenditures, with the exception of additional overhead expenses that the Company will incur in delivering the programs to customers, which amount to 0.2% above the recommended cap. UGI Electric Statement No. 2R at 6:14-20.
44. Act 129's 2% guideline is intended to produce a budget proportional to each EDC's revenues, so that all, regardless of size, are spending the same proportional amount on their EE&C Plan.
45. As filed, UGI Electric proposed to recover Plan costs from two customer classes: residential and non-residential. UGI Electric Statement No. 3 at 8:12-21; UGI Exhibit 1 at 70.
46. The Company agrees with the OSBA that establishing two non-residential rate classes will lend more precision to the rate design of the Plan, while avoiding cross-subsidization between the large and small/medium commercial classes. UGI Electric Statement No. 3R at 10:13-18.
47. The Plan relies on net TRC benefits to support activities such as education, to which it is difficult, if not impossible, to ascribe any energy savings. *Id.* at 12:19-21.
48. The Commission considers free ridership relevant in determining the cost-effectiveness of programs, and attempts to minimize it.
49. Incentives for installation of Compact Fluorescent Lights ("CFLs") present a free ridership potential. UGI Electric Statement No. 2R at 12.
50. UGI Electric's Commercial and Industrial ("C&I") Custom Incentive Program allows for the replacement of energy efficient equipment, including lighting measures, applicable to C&I customer classes where the proposed replacements are not eligible for prescriptive rebates elsewhere under the Plan, and where the measures are substantiated through a technical analysis and approved. UGI Electric Exhibit 1 at 42-49.
51. The C&I Custom program encourages customers to decide on energy saving measures "after a detailed study of lighting needs that is performed by lighting experts, who have every interest in achieving the greatest savings with no compromise in either the quantity or quality of light provided. These experts know the level of incentives that are provided by local utilities and design their packages accordingly." UGI Electric Statement No. 2R at 9:5-9.

52. The Company's C&I Custom program provides the best opportunity to program participants to take full advantage of the intended benefits of the Plan to achieve efficiency, both from a cost and energy standpoint.
53. The Plan, as proposed, calls for the flexibility to make interim filings to the EEC and CD Riders in order to accommodate significant deviations in over or under recovery, which would become effective upon one day's notice. UGI Electric Exhibit No. 1 at 77-78.
54. UGI Electric, in response to testimony from the OCA, agrees to provide 30 days' notice of any adjustments, whether upward or downward, for both riders. UGI Electric Statement No. 3R at 10:5-7.
55. The Company has provided for an extensive evaluation process, incorporating quality assurance and evaluation, audit and verification processes, and measurement of outcomes, that mirrors the self-review required annually by Act 129. UGI Electric Statement No. 1 at 8:22-10:3; UGI Electric Exhibit 1 at 74; 66 Pa.C.S. § 2806.1(b)(1)(i)(J).

ATTACHMENT B

RECEIVED

2011 JUN -2 PM 4: 12

JA PUC
SECRETARY'S BUREAU

RECEIVED

JUN - 2 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**UGI ELECTRIC'S
PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§501, *et seq.*
2. Companies are required to prove the accuracy of their plans by a preponderance of the evidence. 66 Pa.C.S. §§ 315 and 332; *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, 2010 WL 1259671, at *7 (Feb. 17, 2010); 2011 WL 765628, at *10 (Jan. 28, 2011); 2011 WL 1826079, at *16 (May 6, 2011).
3. EDCs with fewer than 100,000 customers, including UGI Electric, are exempt from Act 129's provisions. 66 Pa.C.S. § 2806.1(l); Secretarial Letter at 2.
4. The Commission's review of UGI Electric's Plan is subject to Section 1319 of the Public Utility Code and the required and suggested elements of a voluntary EE&C plan set forth in the Secretarial Letter.
5. The evaluation measurement and verification ("EM&V") of energy savings are to be performed using the Technical Reference Manual ("TRM") established under Docket No. M-00051865. Secretarial Letter.
6. The Total Resource Cost ("TRC") Test, as defined in Act 129 and applied by the Commission pursuant to order at Docket No. M-2009-2108601, is applicable to all voluntary EE&C plans as the single standard by which to determine whether a proposed EE&C plan is cost-effective. Secretarial Letter.
7. The Plan as a whole, as well as each of the individual programs comprising it, is cost effective under the Commission-established TRC Test.

8. UGI Electric's Plan fully complies with the requirements specifically laid out in the Secretarial Letter.
9. The legal issue whether UGI Electric may withdraw the Plan in the event the Commission modifies it in a manner unacceptable to UGI Electric is not ripe for decision. *Nieves v. Pa. Bd. of Prob. & Par.*, 983 A. 2d 236, 241 (Pa. Cmwlth. 2009); *Pennsylvania Industrial Energy Coalition v. Public Utility Commission*, 653 A.2d. 1336, 1352 (1995) *aff'd per curiam*, 670 A.2d. 1152 (1996); *Ronald. M. McDonald, t/d/b/a Rusmin Trucking*, 67 Pa. P.U.C. 61 (1988).
10. [In the alternative] There is no legal impediment to UGI Electric withdrawing its Plan in the event the Commission modifies it in a manner unacceptable to UGI Electric is not ripe for decision.
11. There is no legal impediment to the Commission's adoption of UGI's lost revenue recovery proposal, either in the form of the CD Rider or in the form of a regulatory asset. 66 Pa.C.S. § 1319; *1993 DSM Order*.
12. From a regulatory policy perspective, adoption of UGI's lost revenue recovery proposal is desirable.
13. Surcharge recovery under the CD Rider is now acceptable from a policy perspective as opposed to when the Commission last considered surcharge recovery of lost revenues, because "deemed savings" as developed in the TRM to measure saved energy is appropriate to use to measure the lost revenues associated with the saved energy, and thus is an easily quantified amount.
14. As between the CD Rider and regulatory asset treatment for lost revenue recovery, CD Rider surcharge recovery is more desirable because it recovers lost revenues on a gradual basis as incurred, is desirable, is in the public interest, and is approved.
15. [In the alternative] Regulatory asset treatment of lost revenues, as alternatively proposed by UGI Electric, including interest, as adopted in the *1993 DSM Order*, is in the public interest and approved.
16. Fuel switching and, in particular, the substitution of natural gas for electricity in specified applications where the energy conservation benefit is demonstrable, is both permitted by the Commission and consistent with the full-fuel-cycle concept that has been embraced by the Department of Energy ("DOE"), NARUC, the AGA, and the NRDC. UGI Electric Statement No. 2R at 14-18.
17. UGI Electric's fuel switching programs, as modified by the SEF Stipulation, fulfills the Working Group Report's definition of fuel neutrality, includes all alternatives that have been demonstrated to be cost effective under the TRC, and are approved as modified by the SEF Stipulation.
18. There is no requirement that UGI Electric propose a peak load reduction target in addition to its consumption reduction target.

19. It is premature to force reallocation of funds from any of the proposed programs into others, whether existing or proposed. UGI Electric Statement No. 2R at 10:10-12.
20. The 2% spending guideline outlined in Act 129 is intended to produce a budget proportional to each EDC's revenues, so that all, regardless of size, are spending the same proportional amount.
21. The EE&C Plan that UGI Electric proposes has been created to serve the best interests of its customers, and is consistent with the appropriate legal standard to be applied in this case, as well as the specific guidance set forth in the Commission's Secretarial Letter, is in the public interest and is approved as modified during the course of the proceeding by UGI Electric.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon all 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:

Via First Class U.S. Mail and Electronic Mail Service

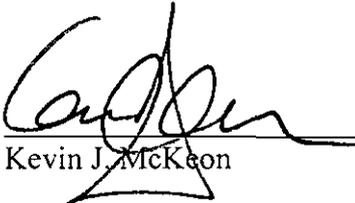
The Honorable Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
400 North Street
Harrisburg, PA 17105
scolwell@state.pa.us

Charles Daniel Shields, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
chshields@state.pa.us

Steven C. Gray, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
sgray@state.pa.us

Tanya J. McCloskey, Esquire
David T. Evrard, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut St., Forum Place, 5th Floor
Harrisburg, PA 17101-1923
tmccloskey@paoca.org
devrard@paoca.org
cappleby@paoca.org

Kenneth L. Mickens, Esquire
Sustainable Energy Fund of
Central Eastern Pennsylvania
316 Yorkshire Drive
Harrisburg, PA 17111
kmickens11@verizon.net



Kevin J. McKeon

Dated: June 2, 2011