

COMMONWEALTH OF PENNSYLVANIA



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June 14, 2011

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

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

Dear Secretary Chiavetta:

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

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

Respectfully Submitted,

A handwritten signature in black ink that reads "David T. Evrard".

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

Enclosures

cc: Honorable Susan D. Colwell

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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RESPONSE BRIEF  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: June 14, 2011

## TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. HISTORY OF THE PROCEEDING.....	1
III. SUMMARY OF ARGUMENT.....	1
IV. ARGUMENT .....	2
A. Burden of Proof/Applicable Legal Standard .....	2
B. Filed Plan .....	4
1. Position Regarding Approval of Plan as Filed .....	4
2. Filed Plan’s Adherence to Commission’s December 23, 2009 Secretarial Letter .....	4
3. Filed Plan’s Cost Effectiveness .....	4
4. Filed Plan’s Voluntary Nature/Company’s Ability to Withdraw Plan If Commission Removes Revenue Recovery Mechanism.....	4
C. Proposed Modifications to Filed Plan.....	5
1. Elimination of Revenue Recovery Mechanism .....	5
2. Elimination or Modification to Fuel Switching Program.....	10
a. Incentive Levels.....	10
b. High Efficiency Equipment.....	13
c. Fuel-Switching for Low-Income Customers .....	15
3. Inclusion of Peak Load Reduction Targets.....	16
4. Reduction in Total Plan Expenditure Levels .....	16
5. Recovery of Plan Costs by Customer Class .....	16
6. Expansion or Modification of Customer Education.....	16
7. Funding Percentage for Residential Lighting.....	17

8. Modification to Commercial Lighting.....	18
9. Notice Period for Change in Plan Rider Charges .....	19
10. Necessity for Prudence Review of Plans .....	20
11. Applicability of the Plan to Small Business Customers .....	20
12. Expansion to include Solar Thermal and/or Tier I Resources .....	20
13. Other Modifications.....	20
V. CONCLUSION.....	21

TABLE OF AUTHORITIES

**Cases**

*Pennsylvania Indus. Energy Coalition v. Pennsylvania Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Commw. Ct. 1995) .....3, 5

**Statutes**

42 U.S.C. § 6295 .....17, 18

66 Pa.C.S. § 1319 .....2, 7

66 Pa.C.S. § 2806.1(k)(2) .....5

66 Pa.C.S. § 2806.1(l).....5

66 Pa.C.S. § 2806.1(k)(3) .....5, 7

**Administrative Decisions**

*Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions* (2011 TRC Order)..... 14

*Investigation Into Demand Side Management By Electric Utilities Uniform Cost Recovery Mechanism*, 80 Pa. P.U.C. 608, 633-641 (1993) .....2

## I. INTRODUCTION

On June 2, 2011, the Office of Consumer Advocate (OCA) filed its Initial Brief addressing the issues raised in this proceeding. The OCA submits that its Initial Brief provides the Administrative Law Judge (ALJ) and the Public Utility Commission (Commission) with a comprehensive discussion of the issues it has identified in this case. The OCA's Initial Brief fully addresses and responds to many of the arguments raised by UGI-Electric in its Initial Brief.

It is not the purpose of this Response Brief to address all of the arguments contained in the Company's or Initial Brief. The OCA will limit its reply to those issues requiring additional clarification and response. Therefore, the failure of the OCA to address specific arguments contained in the Company's Initial Brief does not mean that the OCA agrees with UGI-Electric's positions or that the OCA has changed its position.

## II. HISTORY OF THE PROCEEDING

No reply necessary.

## III. SUMMARY OF ARGUMENT

As detailed in the OCA's Initial Brief, the OCA is opposed to adoption of UGI-Electric's Energy Efficiency and Conservation Plan (EE&C Plan or Plan) as filed. The OCA is strongly opposed to the Company's claim for lost revenue recovery and has serious concerns with the residential fuel-switching component of UGI-Electric's Plan. In this Response Brief, the OCA addresses the arguments advanced by the Company on both the lost revenue recovery and the fuel-switching issues. The OCA also responds to arguments made by the Company in opposition to OCA-recommended modifications to the Plan's Compact Fluorescent Lightbulb (CFL) Campaign and to the Custom Incentive Program for commercial and industrial customers. The

OCA further submits that UGI-Electric has not adequately justified its proposed Plan expenditure level as required by the Commission's Secretarial Letter of December 2009.

#### IV. ARGUMENT

##### A. Burden of Proof/Applicable Legal Standard

In its Initial Brief, under the heading Applicable Legal Standard, UGI-Electric describes the contents of the Commission's December 2009 Secretarial Letter (Secretarial Letter) in which the Commission set forth requirements and guidelines applicable to voluntarily filed energy efficiency and conservation (EE&C) plans by small electric distribution companies (EDCs) not subject to Act 129. After describing the Secretarial Letter, the Company goes on to state that Section 1319 of the Public Utility Code, 66 Pa.C.S. § 1319, "provides the statutory authority for non-Act 129 EE&C plans." UGI-Electric also states that the Commission relied on Section 1319 when issuing its 1993 DSM Order<sup>1</sup> in which it determined that the recovery of lost revenue in connection with implementation of conservation or load management programs was permissible under the Public Utility Code.

The OCA wishes to note that nowhere in the Secretarial Letter does the Commission mention Section 1319. The Letter is cast entirely in terms of which elements of Act 129 the Commission will require of the small EDCs, which elements it will not require and which elements will serve as guidance. The following are sample excerpts from the Secretarial Letter:

While the provisions of Act 129 are not directly applicable to voluntary EE&C plans, *certain elements of the Act 129 EE&C Program are instructional and applicable to any prudent and cost-effective EE&C program.* To begin with, the Commission will adopt the Act 129 definition of an energy efficiency and conservation measure and apply it to all voluntary EE&C plan filings. Furthermore, as the cost-effectiveness and verification of energy savings is prudent and essential for any such program, the evaluation, verification and measurement (EM&V) of energy savings are to be evaluated using the Technical

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

Reference Manual established under Docket No. M-00051865. In addition, the Total Resource Cost test as defined in Act 129 and applied by this Commission pursuant to any order at Docket No. M-2009-2108601 will also apply to all voluntary EE&C plans to determine whether each proposed EE&C plan is cost-effective. (Secretarial Letter at 1-2; emphasis added; footnotes omitted)

Additionally, while the Commission will not at this time establish mandatory energy reduction targets for voluntary EE&C plans, ... *the Commission encourages those filing voluntary EE&C plans to use the Act 129 targets as guiding principles* in establishing energy consumption and peak demand objectives. (Secretarial Letter at 2; emphasis added)

While these guidelines were drawn from those established under Act 129 and this Commission's implementation of Act 129, we recognize 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. *Nevertheless, in evaluating each voluntary EE&C plan, the Commission will be looking to the Act 129 program and applying elements of that program where it is prudent and cost-effective.* (Secretarial Letter at 2; emphasis added)

The Commission makes no reference anywhere in the Secretarial Letter to Section 1319 or its applicability to voluntarily filed EE&C plans. The only polestar used by the Commission to guide the small EDCs as to the content of the EE&C plans they might file is Act 129.

Further, as the OCA discussed in its Initial Brief, any reliance on the 1993 DSM Order as precedent for the recovery of lost revenues in connection with implementation of an EE&C plan must be questioned in the face of a subsequent legislative enactment (Act 129) in which the General Assembly clearly prohibits the recovery of lost revenues by either of the methods UGI-Electric has proposed in this case – via an automatic adjustment clause or via regulatory asset treatment. 66 Pa. C.S. § 2806.1(k)(2) and (3). Moreover, while the 1993 DSM Order was appealed to Commonwealth Court<sup>2</sup>, the lost revenue issue was not addressed because the Court found it to be not ripe for review and the matter was remanded to the Commission. Because the

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<sup>2</sup> *Pennsylvania Indus. Energy Coalition v. Pennsylvania Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Commw. Ct. 1995)

1993 Order stemmed from an Investigation Docket, no further action was taken by the Commission and the 1993 Order was never applied.

B. Filed Plan

1. Position Regarding Approval of Plan as Filed

The OCA reiterates the position stated in its Initial Brief. The OCA opposes approval of UGI-Electric's EE&C Plan as filed.

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

As stated in its Initial Brief, the OCA submits that UGI-Electric's Plan meets the Commission's Secretarial Letter guidelines with one exception. The Secretarial Letter states that "while the cost limits contained in Act 129 are not applicable to a voluntary EE&C plan, an EDC submitting such a plan must justify the level of expenditures it proposes whether they meet the Act 129 cost limits or not." Secretarial Letter at 2. The OCA submits that the Company has not provided sufficient justification for its proposed level of costs, which exceed the 2% limit imposed in Act 129. UGI-Electric St. No. 3 at 4-5.

3. Filed Plan's Cost Effectiveness

As noted in its Initial Brief, the OCA does not dispute that UGI-Electric's Plan is cost-effective based strictly on an application of the Total Resource Cost (TRC) test. However, the recovery of lost revenue, if approved, would add to the Plan substantial costs that are not reflected in the TRC. In addition, passing the TRC alone does not make it a sound or reasonable plan if there are shortcomings in the plan's design. Only plan design modifications can accomplish that.

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

In its Initial Brief, UGI-Electric states its view that because of the voluntary nature of its filing, it believes that it has the ability to withdraw its Plan if the Commission modifies the Plan either by eliminating the lost revenue recovery claim or making some other change that is unacceptable to the Company. The OCA does not deny that the Company has this right.

That said, however, the OCA urges the Commission not to be swayed by the Company's assertions that failure to receive lost revenue recovery would cause the Company either to withdraw its Plan or to have to file for base rate relief earlier than it otherwise would have. UGI-Electric, St. No. 3RJ at 7. See OCA Initial Brief at 9, 16; OSBA Initial Brief at 12-15. The Commission's sole objective should be to ensure that a sound EE&C plan goes forward and that customer dollars are spent in a cost-effective manner.

### C. Proposed Modifications to Filed Plan

#### 1. Elimination of Revenue Recovery Mechanism

UGI-Electric contends in its Initial Brief that lost revenue recovery is lawful. In its first line of argument, the Company maintains that although Act 129 expressly prohibits (at 66 Pa.C.S. § 2806.1(k)(2) and (3)) large EDCs from recovering lost revenues except prospectively through a Section 1308 base rate proceeding, Act 129, and therefore the lost revenue recovery prohibition, does not apply because companies like UGI-Electric, with fewer than 100,000 customers, are exempted from the Act (66 Pa.C.S. § 2806.1(l)).

As the OCA noted in its Initial Brief, even if the Company's argument were accepted, any proposal to recover lost revenue nevertheless runs afoul of the general prohibition against single-issue ratemaking, *Pennsylvania Indus. Energy Coalition v. Pennsylvania Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Commw. Ct. 1995) (PIEC), ("Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally

considered in a base rate case.” PIEC at 1350.) The Initial Briefs of OTS and *amicus* Industrial Customer Groups explain quite well the rationale for the prohibition and the reason it must be applied in this case. OTS Initial Brief at 14-15, 24; Industrial Customers *Amicus Brief* at 6-7. Basically, items of revenue or expense are not to be treated in isolation when setting rates. Rather, all such items must be considered together, including those which work to the benefit of the company as well as those that benefit consumers. The increases and decreases in all of these items must be accounted for in setting just and reasonable rates. The Industrial Customers Group explains this very well in its *amicus* brief:

Under single-issue ratemaking, the Commission reviews only a limited portion of the overall ratemaking equation and, in effect, assumes that a single variable such as a reduction in sales translates into reduced profits for the utility. If all other elements of the equation remain consistent from the future test year, revenue decoupling essentially *guarantees* the utility an awarded return, rather than just ensuring the *opportunity* to earn an awarded return. UGI-Electric’s sales may decrease due to conservation efforts; however, if the Company’s cost of borrowing also is reduced, or if its distribution costs decrease commensurate with the reduced sales, then the utility’s profit or return is unaffected. Implementing single issue ratemaking schemes such as the Company’s CD Rider proposal, or the Company’s alternate proposal to bestow regulatory asset treatment upon its lost revenues without further review in a future [b]ase rate proceeding, deprives the Commission of the ability to examine those types of offsets.

Industrial Customers Group *amicus* brief at 6-7 (emphasis in original).

The most appropriate setting in which to examine the impact of energy efficiency programs on revenues is in a base rate case. The wisdom of this assertion has been confirmed in the express declaration of public policy by the General Assembly that lost revenue claims related to EE&C programs under Act 129 are to be addressed on a prospective basis only, in future base rate proceedings under Section 1308 of the Public Utility Code.

The OCA would also note that, again, even if Act 129 does not in fact apply to UGI-Electric, the December 2009 Secretarial Letter used Act 129 as its sole guide for establishing the

requirements and expectations of any voluntarily filed EE&C plan. While the Commission did not specifically address the issue of lost revenue recovery in the Secretarial Letter, the fact that the Commission relied on Act 129 in setting the parameters for a voluntarily filed EE&C plan would suggest that it would not favor a plan that included a lost revenue claim when such a claim is contrary to the clear legislative expression of public policy set forth in Act 129.

A second line of argument advanced by UGI-Electric in its Initial Brief is that since Act 129 does not apply to the EE&C plan of a small EDC, Section 1319 of the Public Utility Code does.<sup>3</sup> The Company maintains that this section provides all the authority necessary to approve a claim for lost revenue recovery as part of a small EDC EE&C plan. As evidence of this, the Company cites the 1993 DSM Order in which the Commission permitted electric utilities to treat lost revenues associated with implementation of conservation or load management programs as a regulatory asset, the recovery of which would be deferred until the utility's next base rate case. However, as the OCA pointed out in its Initial Brief and above, even if allowing recovery of lost revenues as a regulatory asset in a base rate proceeding may have been arguably permissible in 1993, prior to the pronouncement of any policy on the subject by the General Assembly, such is no longer the case. The express direction of the legislature regarding the means of recovery of lost revenue embodied in Act 129 must supersede any earlier decision of the Commission. The General Assembly, while allowing for recovery of lost revenue in a base rate proceeding (Section 2806.1(k)(3)) via the sales and revenue data used to determine rates, provides no authorization for the accrual of a regulatory asset in the period leading up to the base rate proceeding. In the face of an express statement of policy to the contrary by the General

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<sup>3</sup> 66 Pa.C.S. § 1319. Section 1319 provides that if an electric or natural gas public utility establishes a conservation or load management program which the Commission finds to be prudent and cost-effective, the utility will be allowed to recover "all prudent and reasonable costs associated with the development, management, financing and operation of the program." Notably, there is no reference to lost revenues in Section 1319.

Assembly, the precedential value of the 1993 DSM Order must be questioned. Further, its value as precedent is questionable because the Order was never actually applied.

UGI-Electric's claim is further flawed because the amount of lost revenue claimed by UGI-Electric will be based on the "deemed savings" identified in the Technical Resource Manual (TRM) for various conservation measures, it could not lead to just and reasonable rates since the TRM "deemed savings" cannot accurately approximate the actual energy consumption reductions that may occur in UGI-Electric's territory. OCA Initial Brief at 13-16. OCA witness Crandall referred to the "deemed savings" value as a "coarse indicator" of the actual consumption reductions and stated that it was not an appropriate basis for determining lost revenue. *Id.* at 23. UGI-Electric takes issue with this in its Initial Brief. The Company argues that the "deemed savings" in the TRM is the "gold standard" for measuring the effectiveness of the Pennsylvania's conservation programs and that if the "deemed savings" is appropriate for use in measuring the number of kilowatt hours saved, it is appropriate to use for measuring the lost revenues associated with those saved kilowatt hours. UGI-Electric Initial Brief at 25. This argument misses the point – the "deemed savings" are *not* appropriate for ratemaking purposes. What the TRM "deemed savings" are appropriate for is to estimate, when *planning* an EE&C program, whether a portfolio of planned measures has the potential to achieve a certain savings target. The "deemed savings" are not the type of empirically verified savings upon which lost revenues should be measured for purposes of determining what customers pay. This is what OCA witness Crandall was referring to when he said:

Additionally, this approach would involve a relatively small energy efficiency program which means that the estimation and quantification of energy savings would not be subject to a rigorous evaluation, measurement and verification analysis. The derived lost revenue will most likely be based on "deemed" energy saving values as referenced in the rebuttal testimony (See Witness McAllister Rebuttal page 9 line 4). The proposal clearly suggests a process which is unable

to precisely quantify energy savings attributable to the Plan. This proposed approach would lack accuracy, verifiability and introduces other problems. Specifically, UGI-Electric is seeking permission to estimate savings, derive lost revenue values and then apply an interest rate to those theoretical lost revenues. Once estimated and authorized, the applicant would charge all those costs plus interest to customers disaggregated by rate class over a prospective three year timeframe.

OCA St. No. 1-S at 16. Moreover, Mr. Crandall suggested that given the relatively small size of UGI-Electric's EE&C program, it is unlikely to incur the high costs of developing an "accurate quantification of any net lost revenues." OCA St. No. 1 at 24. The inappropriateness of using "deemed savings" to determine lost revenue and the unlikelihood of the Company undertaking a study to accurately measure Plan-attributable consumption reductions only further supports rejecting the Company's lost revenue claim.<sup>4</sup>

In its Initial Brief, under the caption "CD Rider Recovery is Optimal," UGI-Electric again asserts that there is nothing hypothetical or indefinite about the lost revenue recovery through the CD Rider. The Company states that "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 of revenues that correlates to the drop in usage quantified by TRC 'deemed savings'." UGI-Electric Initial Brief at 29. UGI-Electric goes on to state, in effect, that the reason the Commission, in the 1993 DSM Order, opted for allowing lost revenue recovery through regulatory asset treatment rather than through a surcharge was because, at that time, there was insufficient monitoring and evaluation techniques for verifying the revenue loss. *Id.* at 30. The Company asserts that "the TRC approach embodied in Act 129 and the TRM, ...

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<sup>4</sup> UGI-Electric also takes issue with Mr. Crandall's observation that statewide "deemed savings" values used in the TRM may be dissimilar from the savings that occur in UGI-Electric's service territory. The Company questions why the number of kilowatt hours saved from installation of a CFL in UGI-Electric's territory would be any different from the kilowatt-hours saved in any other part of the Commonwealth. Prior penetration rates of measures can vary based on the nature of the service territory and weather-sensitive applications, such as space heating or building envelope modifications, can vary in different portions of the state.

eliminates this concern.” *Id.* The Company then concludes that in the intervening years since the Commission’s 1993 Order, “verification concerns associated with recovering lost revenues through a reconcilable surcharge have been addressed.” *Id.*

As discussed above, using the TRM’s “deemed savings” is not an accurate or appropriate means for approximating actual energy savings upon which to determine lost revenues for ratemaking purposes. If “deemed savings” is used as the basis for determining lost revenue, as UGI-Electric proposes, then the verification concerns that existed in 1993 remain just as present today. Further, the OCA would reiterate the point it made in its Initial Brief, that nowhere in the TRM is there any indication that the Manual is to be used for ratemaking purposes. OCA Initial Brief at 15. Finally, it must be stressed that a consequence of relying on a coarse measure of lost revenue for purposes of setting rates is that the resulting rates will be unjust and unreasonable in violation of Section 1301 of the Public Utility Code.

## 2. Elimination or Modification to Fuel Switching Program

### a. Incentive Levels

UGI-Electric devotes a portion of its Initial Brief to establishing that fuel-switching is permitted to be a part of an EE&C plan. UGI-Electric Initial Brief at 33-35. The OCA does not dispute this. Rather, the OCA submits that any fuel-switching programs included in an EE&C plan must be appropriately designed and should spend program dollars in the most cost-effective manner. On this point, the OCA has taken the position that the incentive levels for fuel-switching being offered by UGI-Electric to residential customers are excessive and should be reduced by half. OCA Initial Brief at 19. As noted in that Brief, the very generous level of the incentives proposed contribute to the OCA’s concern that the programs may be more about

building load for UGI-Electric's natural gas and propane affiliates than about achieving electric energy efficiency improvements.

The OCA addressed at length in its Initial Brief the reasons for its call for a substantial reduction in incentive levels. UGI-Electric, for its part, urges in its Initial Brief that the OCA's proposed reduction be rejected. Importantly, the Company states in its Brief that, "Ultimately, there is no way to know precisely what incentive amount is required in order to induce a customer to switch." UGI-Electric Initial Brief at 39. The Company then notes that it wants its Plan to succeed and believes that a successful roll-out the fuel-switching programs will be particularly important to the Plan's success. *Id.* The Company quotes its witness Mr. Raab as stating, "The best way to ensure early success is by offering large incentives for customers to participate." UGI-Electric Initial Brief at 40 (quoting UGI-Electric St. No. 2R at 21). The Company then reiterates the point when it says, "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." UGI-Electric Initial Brief at 40.

Thus the Company concedes that there is "no way to know precisely what incentive amount is required," and that "the size of the incentive needed to induce a customer to switch is a critical unknown." Yet having conceded the impossibility of knowing the proper incentive level, it claims to "know for sure" that the incentive must be very substantial to ensure early success of the program.

In his testimony, OCA witness Crandall offers an alternate view:

Generally speaking, a 100% rebate is not needed in order to induce customers to participate, especially when programs are new and when participation targets are quite low. There is a continuum of customers from those that would have participated without incentives (free riders) to those that will never participate.

Offering a lower rebate will adequately incent those customers that are more likely to participate. If the savings goals can be accomplished with the lower rebates, that money can be used to expand other programs to increase the savings levels... UGI-Electric recognizes these facts in the design of its lighting and other programs. Applying those principles to the fuel switching program would make it a more cost effective program, and therefore the funds could be used to expand other programs.

OCA St. No. 1 at 19-20.

Mr. Crandall also states:

Starting off with high incentives means that the free riders and easily persuaded customers will be paid more than needed to achieve fuel switching participation. It would be more logical to start with lower incentives to capture as many of the free riders and low-hanging fruit at low cost when the fuel switching targets are low and more easily achieved. The incentives could be increased over time as needed to continue to achieve fuel switching targets.

OCA St. No. 1-S at 10.<sup>5</sup>

With respect to ensuring a successful roll-out of the Company's Plan, Mr. Crandall states:

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

OCA St. No. 1-S at 11.

Further, as the OCA pointed out in its Initial Brief (relying on OCA St. No. 1, Exh. GCC-7), the expected yearly participation levels for all three residential fuel-switching measures are

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<sup>5</sup> One justification offered by the Company for setting high fuel-switching incentive payments is a desire to minimize the *percentage* of free-riders in the program. UGI-Electric St. No. 2R at 21. Mr. Crandall responded to this by stating:

Mr. Raab's assertion is premised on the notion that the number of free riders is not reduced, but by paying excessively generous incentives (above the incremental cost), participation levels will be so high as to reduce the *percentage* of participants that are free riders. Rather than to design the program to reduce the *number* of free riders, Mr. Raab proposes to provide them an even sweeter deal (the free riders will cost electric ratepayers paying for the incentives more) to increase the participation and reduce the free rider *percentage*. That is inappropriate.

OCA St. No. 1-S at 9-10 (emphasis added).

quite low. For the space heating fuel-switch the expected number of customers is 60 per year which represents 0.59% of the Company's electric space heating customers. For the water heating fuel switch the expected number of participants is 550 per year which represents 2.98% of eligible customers, and for the clothes drying fuel-switch the expected number of customers is 100 per year or 0.24% of eligible customers.

If, as the Company states, it is impossible to know precisely the incentive amount that will be required to induce a customer to switch fuels, the OCA questions why the reduced incentive approach suggested by Mr. Crandall is any less plausible than the approach that has been proposed by the Company.<sup>6</sup> Moreover, given the very modest expected levels of customer participation in the residential fuel-switching program, it seems that these levels of participation should be able to be achieved without resort to the generous incentive levels proposed by the Company. When compared with the Company's proposal, the OCA's reduced incentive approach has the virtue of attempting to achieve the same results using fewer dollars. This has the potential of increasing the cost-effectiveness of the program while at the same time freeing up funds that could be used to expand other cost-effective elements of the Plan. The OCA submits that its approach of reducing incentive levels for fuel-switching is the more conservative, less costly and more rational approach and should be adopted by the Commission.<sup>7</sup>

b. High Efficiency Equipment

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<sup>6</sup> In Surrebuttal Testimony, Mr. Crandall states flatly, "My core argument, based on over three decades of experience, is that it does not take an incentive equal to 100% of incremental cost to move the market." OCA St. No. 1-S at 5.

<sup>7</sup> As explained in its Initial Brief, the OCA also opposes that portion of the fuel-switching incentives which are intended to compensate customers making the switch for gas service line and other gas-related infrastructure improvements. The OCA submits that this amounts to a benefit to the customer's eventual natural gas supplier at the expense of electric ratepayers. It is also unnecessary in view of the fact that customers converting to natural gas will realize operational savings over the life of the new equipment. OCA Initial Brief at 19.

As discussed in its Initial Brief, OCA witness Crandall testified in favor of establishing as a condition for receiving any fuel-switching incentive payments that the customer replace their electric equipment with high efficiency (as opposed to standard efficiency) equipment for consuming natural gas or propane. OCA Initial Brief at 24-26. UGI-Electric opposes this recommendation on several grounds. UGI-Electric Initial Brief at 42-43.

One rationale the Company offers for opposing the OCA's recommendation is that its EE&C Plan is intended to incentivize its customers to reduce their electricity consumption, which will occur regardless of whether a customer switches to a standard efficiency or high efficiency gas appliance. *Id.* at 42. While this is certainly true, the Company's apparent indifference for energy efficiency on the gas side of the switch seems completely at odds with the "full fuel-cycle" approach to energy efficiency that it has embraced in connection with this very program. See Plan at 57. In addition, as the OCA noted in its Initial Brief, in the Commission's recent Tentative Order regarding *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions* (2011 TRC Order)<sup>8</sup>, on the topic of the efficiency of appliances involved in a fuel-switching program, the Commission indicated that its proposed resolution of the issue is that new equipment installed to replace electric equipment should be high efficiency equipment. 2011 TRC Order at 20.

In its Initial Brief, the Company also expresses concern for the fact that Mr. Crandall recommends both a requirement for high efficiency equipment *and* a substantial reduction in incentive payment levels. As the OCA argued above, the incentive levels proposed by the Company are very high. The OCA submits that given the modest levels of participation the Company anticipates, the incentives can be reduced and a requirement for high efficiency gas equipment imposed without compromising participation.

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<sup>8</sup> Issued at Docket No. M-2009-2108601, Order entered May 6, 2011.

c. Fuel-Switching for Low-Income Customers

In its Initial Brief, the OCA opposed that portion of UGI-Electric's residential fuel-switching program that would offer low-income customers incentives to switch to propane. The OCA's concern was founded on the fact that propane is an unregulated fuel source and that low-income customers who currently heat with electricity and converted to propane would lose the protections afforded such customers under the Public Utility Code and the regulations thereunder. OCA Initial Brief at 26-27.

UGI-Electric, in its Initial Brief, criticized the OCA's position and claimed that the OCA proposes to restrict the ability of low-income customers to fuel switch so that they could not switch to propane or solar thermal water heating, but only to natural gas.

The OCA did not address solar thermal water heating for low-income customers in its Brief and wishes now to state that it does not oppose switching from electric water heating to solar thermal water heating for any customer, including low-income customers. While it is uncertain whether a low-income customer could afford the up-front costs associated with solar thermal water heating, if that hurdle was overcome, the customer would still be relying on a regulated fuel source for space heating and backup water heating and would still be using electricity for other household needs. In addition there is no ongoing payment obligation owed to a supplier of the energy that comes from the solar thermal device. Thus the protections for payment-troubled customers that exist in the Public Utility Code and regulations would not be needed in such a case. The issues regarding conversion of all energy service to propane are much different than solar hot water heating. The OCA reiterates its concern for propane conversions for low-income customers and urges the Commission to direct UGI-Electric to drop this incentive for low-income customers from its program.

3. Inclusion of Peak Load Reduction Targets

No reply necessary.

4. Reduction in Total Plan Expenditure Levels

The OCA's Initial Brief pointed out that UGI-Electric's proposed annual expenditure level for its EE&C Plan represents approximately 2.3% of the Company's base period (June 2007 through May 2008) revenues. OCA Initial Brief at 29. This exceeds the mandatory 2% of revenue cap set for large EDCs in Act 129. While the December 2009 Secretarial Letter indicates that the Act 129 cap does not apply to the voluntary plans of small EDCs, it states that a small EDC must justify the level of expenditures it proposes. Secretarial Letter at 2.

In its Initial Brief, the OCA maintained that UGI-Electric had not justified its proposed expenditure level, particularly in light of the fact that its fuel-switching incentive payment levels were so high. The OCA submits that nothing in the Company's Initial Brief provides the required justification.

5. Recovery of Plan Costs by Customer Class

No reply necessary.

6. Expansion or Modification of Customer Education

As discussed in the OCA's Initial Brief, OCA witness Crandall encouraged UGI-Electric to engage in a customer education effort particularly aimed at increasing public awareness of the energy consumption of plasma televisions and home entertainment systems and the energy use connected with the phenomenon known as "phantom load." OCA Initial Brief at 31.

In its Initial Brief, UGI-Electric responded by pointing to witness Raab's testimony in which he states that the Company relies on net TRC benefits to support education activities and that it is difficult to ascribe energy savings to such activities. UGI-Electric Initial Brief at 47.

The Company states that it must use its funds on a portfolio of programs that meets the TRC cost-effectiveness test and it maintains that its Plan, as filed, meets that test without incorporating a consumer education component. *Id.*

In response, the OCA refers to Mr. Raab's Rebuttal testimony in which he stressed the importance establishing the cost-effectiveness of the programs in the Company's Plan, but went on to state that:

When that has been established, the Company can use the program cost-effectiveness information to develop a proposed budget and scope of a general energy efficiency education program, while ensuring that its overall portfolio of energy efficiency programs remains cost-effective.

UGI-Electric St. No. 2R at 13. The OCA would encourage the Commission to take the Company up on its offer. UGI-Electric should be directed that when the cost-effectiveness of its programs has been established, the Company should develop an energy efficiency education component to its Plan that includes education on the points raised by OCA witness Crandall.

#### 7. Funding Percentage for Residential Lighting

OCA witness Crandall recommends doubling of the proposed number of Compact Fluorescent Lightbulbs (CFL) made available under UGI-Electric's CFL Lighting campaign. OCA St. No. 1 at 6. The Company, in its Initial Brief, argues for approval of the CFL campaign as filed. UGI-Electric Initial Brief at 49.

The reasons for each party's position are well-documented in their respective Briefs. The OCA wishes here to respond to the Company's argument that the passage of the Energy Independence and Security Act of 2007 (EISA)<sup>9</sup> will require consumers to move toward more efficient lighting technologies without the need for incentives. The Company is concerned about

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<sup>9</sup> Pub. Law 110-140, codified in relevant part at 42 U.S.C. § 6295.

free-ridership issues, that is, that EISA will force consumers to move to more efficient lighting even without incentives and that this could impact the cost-effectiveness of the CFL campaign.

The OCA notes that under EISA, incandescent light bulbs are to be phased out over a three-year period beginning in 2012 with 100 W bulbs, 75 W bulbs in 2013, and 60W and 40W bulbs in 2014. 42 U.S.C. § 6295 During the period that UGI-Electric's CFL campaign will be in effect, there is likely to be, both in terms of existing inventory as well as new production, ample quantities of incandescent light bulbs available on the market. It should not be anticipated or assumed that once the EISA phase-out begins that consumers will automatically switch to CFLs on their own. There will still be a need for incentives to steer customers away from the less expensive and less efficient bulbs. Hence, the OCA submits that there is still merit in following Mr. Crandall's recommendation to substantially increase the number of bulbs distributed in the campaign.

The numerous advantages of having a well-funded CFL program are described in the OCA's Initial Brief at pp. 32 and 33. Not least among these is the ability of a CFL program to improve customer receptivity for all other residential EE&C initiatives. OCA Initial Brief at 33. The OCA reiterates its position that the Commission should give strong consideration to Mr. Crandall's recommendation for a substantial increase in the resources devoted to the CFL campaign.

#### 8. Modification to Commercial Lighting

OCA witness Mr. Crandall recommends that UGI-Electric's EE&C Plan should include prescriptive lighting rebates for commercial and industrial (C&I) customers. A prescriptive rebate is one with a specific, pre-set dollar amount designated for a particular type of lighting

technology. The Company opposes this recommendation on a number of grounds as detailed in its Initial Brief at pp. 49-50.

The Company points to the benefits of its Custom Incentive Program for C&I customers under which customers will be eligible for rebates for a variety of measures, including lighting improvements, that are tailored to the particular needs of the customer's business. It states that its customers are better equipped than the Company to make decisions about what energy efficiency technologies to employ. UGI-Electric Initial Brief at 50. With respect to lighting, the Company notes that energy saving measures are often undertaken after a detailed study of lighting needs is performed by a lighting expert. *Id.*

In response, the OCA would note that there are likely many C&I customers for whom a sophisticated lighting analysis performed by a lighting expert would be prohibitively expensive and would not be necessary where the lighting systems are relatively simple, as they might be in a small business facility. For such customers, having a straightforward prescriptive rebate program in place would enable them to readily perform their own cost-benefit analysis for making lighting improvements and this would lead to quicker and easier customer adoption of the energy efficiency program.

The OCA does not dispute that the Company's Custom Incentive Program for C&I customers has merit and should be pursued. Rather, the OCA submits that the UGI-Electric's EE&C Plan could be enhanced by augmenting its proposed programs for commercial and industrial customers with a program offering prescriptive lighting rebates. As with the recommendation for enlarging the CFL program, the OCA urges the Commission to give strong consideration to adding the prescriptive rebate program.

#### 9. Notice Period for Change in Plan Rider Charges

No reply necessary.

10. Necessity for Prudence Review of Plans

The OCA is not briefing this issue.

11. Applicability of the Plan to Small Business Customers

The OCA is not briefing this issue.

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

As stated in its Initial Brief, the OCA has no objection to the Joint Stipulation entered into between UGI-Electric and the Sustainable Energy Fund providing for the inclusion of an incentive for switching from electric water heating to solar thermal water heating as part of UGI-Electric's proposed residential fuel-switching program.

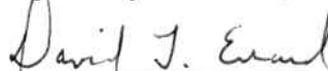
13. Other Modifications

No reply necessary.

## V. CONCLUSION

For the reasons discussed above, and those set forth in the Initial Brief of the OCA, the OCA submits that the Commission should reject UGI-Electric's EE&C Plan as proposed and direct that if the Company elects to resubmit a Plan, that it be modified in the manner recommended by the OCA in this Brief and the OCA's Initial Brief.

Respectfully Submitted,



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Dated: June 14, 2011

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CERTIFICATE OF SERVICE

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

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

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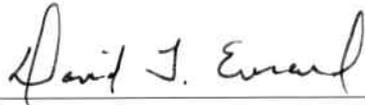
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