



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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IN REPLY PLEASE
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August 1, 2011

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

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

Docket No. M-2010-2210316

Dear Secretary Chiavetta:

Enclosed please find an original and nine (9) copies of the Office of Trial Staff's
Reply Exceptions in the above-captioned proceeding.

Copies of these Reply Exceptions are being served on all active parties of record.

Sincerely,

Charles Daniel Shields
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. No. 29363

Enclosure
CDS/edc

cc: Parties of Record
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Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY EXCEPTIONS
OF THE
OFFICE OF TRIAL STAFF**

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Dated: August 1, 2011

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I. INTRODUCTION

The Office of Trial Staff (“OTS”) respectfully submits these two Reply Exceptions in direct response to the two Exceptions filed on July 25, 2011, by UGI Utilities, Inc. - Electric Division (“UGI-Electric” or “Company”) to the Recommended Decision of presiding Administrative Law Judge Susan D. Colwell (“ALJ Colwell”) that was issued on July 15, 2011.

The Recommended Decision provides a thorough history of this proceeding, accurately characterizes the positions of the parties regarding each litigated issue, and provides definitive recommendations for the disposition of each such issue. In doing so, OTS considers the Recommended Decision to include well reasoned and well supported recommended modifications to UGI-Electric's proposed Energy Efficiency and Conservation Plan (“EE&C Plan” or “plan”) for consideration by the Commission.¹ In contrast to the OTS perspective, the Company's two filed Exceptions clearly exhibit their dissatisfaction with ALJ Colwell's recommended modifications to their submitted plan.

It is important to reiterate that the primary position of OTS throughout this

1 By way of very brief background, the instant proceeding was initiated on November 9, 2010, when the Company petitioned the Commission seeking approval of a proposed EE&C Plan. As referenced in the Plan, the Commission's Secretarial Letter of December 23, 2009, provided that the filing of such an EE&C Plan was left to the discretion of UGI-Electric and the three other jurisdictional electric distribution companies (“EDCs”) also with fewer than 100,000 customers, given that the Act 129 mandates for the reduction of energy consumption and demand provisions were not applicable to EDCs with less than 100,000 customers.

case has been that the Company's Petition seeking Commission adoption of an EE&C Plan, strictly under the Company's insisted upon terms and conditions, should be denied in its entirety.² Given that the Recommended Decision contained provisions for the adoption of a plan with essential modifications made by the ALJ that are consistent with a number of the OTS recommendations presented *in the event* some modified plan is considered for authorization by the Commission, OTS elected to file just one Exception to the Recommended Decision.³ Even that one OTS Exception notes that the referenced ALJ recommendation serves to legitimately and validly reduce plan expenses by capping fuel switching plan incentive amounts, but that an even greater level of overall reductions to total EE&C plan expenditures was appropriate to duly recognize the smaller size of this EDC and the financial effect upon customers given the smaller customer base.

2 On June 2, 2011, OTS filed its Initial Brief setting forth the argument, evidence and law supporting its recommendations to the Commission that the instant Petition be denied, or in the alternative if any plan were to be considered, that it be modified as recommended by OTS. On June 14, 2011, OTS filed its Response Brief in this matter. As argued by OTS, the Company's plan as presently submitted is fatally flawed, given *inter alia*, (1) the Company's insistence upon the inclusion of a revenue recovery mechanism scheme [either through a surcharge or regulatory asset treatment] to guarantee a certain level of their distribution service revenues; (2) the inclusion of a fuel switching plan that is not fuel neutral, overly generous and unduly beneficial to affiliated entities; (3) the failure to include provisions designed specifically to achieve peak load reductions; and (4) the high level of proposed plan expenditures. OTS IB, pp. 12-36. OTS RB, p. 5.

3 The OTS Exception is entitled, "The ALJ's Recommendation That Reduces UGI-Electric's Proposed Total Plan Expenditure Levels Of 2.3% Of Annual Revenues Errs Only To The Extent That It Fails To Further Reduce The Total Plan Expenditure Levels To The OTS Recommended Cap Of 1.2% To Duly Recognize The Smaller Size Of The Company."

In general, these OTS Reply Exceptions responding to UGI-Electric's Exceptions primarily rely and focus upon the relevant OTS recommendations as presented on the record in this proceeding. To the extent that the ALJ has quoted and relied upon the arguments of the other parties in producing her Recommended Decision, we anticipate that those parties will likely also primarily cite to and support their own arguments as necessary in any filed reply exceptions to the Company's Exceptions.

II. REPLY EXCEPTIONS

The Recommended Decision's clear and unequivocal rejection of UGI-Electric's alternative proposals seeking Commission approval to ensure a guaranteed revenue level for the Company as part of their plan, either through a surcharge or regulatory asset treatment, is the subject of UGI-Electric's first Exception. UGI-Electric's Exceptions, pp. 1-27; Recommended Decision, pp. 18-31. As noted within the introductory section of the OTS Exception filed July 25, 2011, the ALJ's recommended rejection of any scheme to ensure a guaranteed revenue level as part of the plan is consistent with the positions of OTS and the other statutory parties who are staunchly opposed to approval of any such proposal. OTS IB, pp. 13-23, 24-26; OTS RB, pp. 8-12, 19-23. As would be expected then, the first OTS Reply Exception here argues against the granting of the Company's first Exception and in support of the ALJ's recommendation to exclude guaranteed revenue recovery.

The Company's second Exception relates to the Recommended Decision's identified modification to the Company's proposed fuel switching program to cap incentive amount levels, i.e. payments to customers, to ensure that "[N]o incentive financed by the other ratepayers should exceed 50% of the cost of the replacement." UGI-Electric Exceptions, pp. 25-32; Recommended Decision, p. 39. Since that recommendation by the ALJ has the effect, consistent with the OTS position, of likely reducing the level of overall plan expenditures,⁴ the second OTS Reply Exception here argues against the granting of the Company's second Exception on that point and in support of the ALJ's recommendation.⁵ OTS IB, pp. 27-30; OTS RB, pp. 23-26; OTS Exception, pp. 4-9; Recommended Decision, pp. 37-39.

With that summary, OTS hereby provides these two Reply Exceptions to respond to and oppose the granting of either of UGI-Electric's two Exceptions to ALJ Colwell's Recommended Decision.

⁴ Among the reasons cited by OTS for its recommended removal of the fuel switching plan was the proposed overly generous level of incentives paid to customers that switch from electric service (to natural gas appliances for the most part) to the financial detriment of other customers. OTS IB, pp. 27-30. It is precisely the ALJ's recommended cap upon such incentive levels that is the subject of UGI-Electric's second Exception.

⁵ While emphasizing that the sole OTS Exception represents that the ALJ recommendation is valid and simply did not go far enough to limit overall plan expenditures to an even lower level to properly recognize the smaller size of this EDC. OTS Exception, pp. 4-9.

OTS REPLY EXCEPTION NO. 1

UGI-Electric's Exception No. 1 To The ALJ's Recommendation To Remove Any Guaranteed Distribution Revenue Recovery Scheme From The EE&C Plan Should Be Denied and the ALJ's Recommendation Adopted.

Recommended Decision, pp. 18-31

UGI-Electric Exceptions, pp. 1-24

The Recommended Decision addresses the Company's proposal seeking Commission approval of either a separate surcharge or regulatory asset treatment to recover revenues that fall below a predetermined level due to the success of its proposed energy efficiency and conservation ("EE&C") program.⁶ Recommended Decision, pp. 18-31. In those twenty three pages of the Recommended Decision that thoroughly document the positions of the parties and analyze the applicable law and policy considerations involved, the ALJ concludes her discussion and provides her recommendation, in pertinent part, as follows:

The revenue recovery mechanism is disallowed. The possible withdrawal of the Plan due to the disallowance of this mechanism is preferable to allowing this mechanism. If the Company believes that it is not capable of carrying out the terms of its Plan without the automatic revenue recovery mechanism, then the Plan should be withdrawn until such time that a more affordable Plan can be developed.

Recommended Decision, p. 31.

In its Exception No. 1 to this definitive recommendation in the Recommended Decision, the Company endeavors to respond to the myriad of

⁶ As emphasized by other parties, even determining what portion of an experienced reduced revenue level was attributable to the success of an EE&C is problematic.

individual and collective reasons cited by ALJ in support of her recommendation, and her appropriate use of excerpts from the arguments put forth by the other parties to the proceeding; including those arguments presented in the *amicus curiae* brief submitted collectively by eight customer groups across the Commonwealth. Recommended Decision, pp. 18-31. *See also*: Recommended Decision, at page 20 for the list of names of the customer groups.

In response to the Company's Exception No. 1, OTS first notes that in the paragraph in the Recommended Decision that immediately precedes the concluding paragraph excerpted above, the ALJ states that the most convincing arguments leading to her recommendation are those advanced by the public advocates and large industrial user groups regarding public policy and consistency with traditional rate-making principles. The ALJ then specifically cites to the OTS argument that an adjustable rate mechanism would be “in direct contradiction to what the Legislative and the Commission explicitly prohibited when drafting and Implementing Act 129. OTS Stmt. 1 at 10” Recommended Decision, p. 30. The ALJ further lists other specific reasons for her well-supported decision to remove any revenue recovery mechanism from the proposed EE&C plan, a number of which were also presented by OTS in its Initial and Response Briefs. Recommended Decision, pp. 30-31; OTS IB, pp. 13-26; OTS RB, pp. 8-12,19-23.

In particular, the Recommended Decision incorporates the OTS argument that the establishment of such a revenue level guarantee mechanism is anathema to

well established and fundamental ratemaking principles and that the proper determination of an appropriate level of base rate revenues requires a thorough review and analysis of all factors that go into establishing just and reasonable rates, a scrutiny that can only occur during a base rate proceeding. OTS IB, p. 14. And of significance, even a base rate proceeding only establishes a level of going forward rates designed to give the subject utility the opportunity to receive an identified level of revenues and provides no ironclad guarantee [as sought here] that such a level will be achieved. OTS IB, pp. 14-15.

In the normal process of determining a given utility's appropriate overall revenue requirement in a base rate case, any "lost" revenues will be identified during the extensive and thorough ratemaking analysis and reflected by the using the known, experienced test year levels of consumption and revenues, rather than simply adding in some "locked in" revenue amount of guaranteed recovery. Inherent in the continuation of the normal ratemaking process to reflect lower revenue levels is the rejection of the Company's first proposal to collect such "lost" revenues through the imposition of an additional surcharge.

OTS submits that a dangerous precedent would be set if the Commission were to grant UGI-Electric's first Exception, as it would allow for a non-traditional revenue recovery mechanism that would very likely open the floodgates to filings by other jurisdictional utilities seeking [by whatever method and for whatever reason] to be equally assured of receiving a guaranteed annual level of revenues

from their respective customers. OTS IB, p. 15. As such, the Commission should recognize that there is a massive downside to approving such a revenue guarantee scheme simply to ensure the implementation of a voluntary EE&C Plan by a smaller EDC. OTS IB, p. 15.

As stated by the ALJ and cited above in these OTS Reply Exceptions, rather than including a revenue recovery mechanism simply to satisfy the EDC here, the Plan should be withdrawn until such time that a more affordable Plan can be developed that doesn't requires such guaranteed recovery. Recommended Decision, p. 31. This recommendation by the ALJ is entirely consistent with and supports the OTS Exception filed in this proceeding that recommends that the Commission authorize a lower level of overall plan expenditures.⁷ In point of fact, the Commission can act now to ensure "a more affordable Plan" by granting the OTS Exception and authorizing the Company to institute a plan of a smaller and more appropriate size.

7 With Commission adoption of this OTS Exception, the Commission's Order should direct the Company to (1) modify its submitted total plan expenditure level to represent 1.2% (60% of 2%) of UGI-Electric's total annual revenues and; (2) as part of such calculation, use the OTS recommended twelve months ended in 2006 (per the annual revenue period used to apply the percentage to establish the plan expenditure limits for the Act 129 programs) rather than the twelve month period ended in 2008 used by UGI-Electric in its filing for its expenditures limit calculation. OTS Exception, pp. 7-8.

OTS REPLY EXCEPTION NO. 2

The Portion of UGI-Electric's Exception No. 2 Seeking to Overturn The ALJ's Recommendation To Reduce Incentives Payment Amounts Proposed In The Fuel Switching Program Should Be Denied and the ALJ's Recommendation Adopted.

Recommended Decision, pp. 31-48

UGI-Electric Exceptions, pp. 25-32

The Recommended Decision addresses the Company's proposed fuel switching program at pages 31 through 48. Recommended Decision, pp. 31-58. Within that discussion, the ALJ at pages 37 through 39 addresses the specific issue of the Company's proposed level of incentive payments to customers to switch fuels. Recommended Decision, pp. 31-58. On that subject of the appropriate level for such incentive payments, the ALJ correctly determines that the Company's proposed amounts of such financial incentives are too high and and thus recommends that “[N]o incentive financed by the other ratepayers should exceed 50% of the cost of the replacement.” Recommended Decision, p. 39.

UGI-Electric's Exception No. 2 responds to two sections of the Recommended Decision, the first recommending a cap on the incentive payments at 50% of the cost of the replacement (non-electric) appliance cost and the second declaring that such incentive payments to customers should only be for appliances

substituted for electric appliances that are “highly efficient.”⁸ Recommended Decision, pp. 37-39, 43-46.

In response to the part of the Company's Exception that argues against Commission adoption of the ALJ's recommended limitations on incentive payment amounts to 50% of the cost of the replacement appliance, OTS responds by first referencing the ALJ's astute observation in the Recommended Decision, under the heading “Incentive levels,” where she states that, “While admitting that its own figures are based upon conjecture and speculation, the Company criticizes the OCA and OTS witnesses for their opinions that the incentives are too high.” Recommended Decision, p. 37. The ALJ's statement more than likely indicates that she considers the Company's argument seeking to undermine the OTS position, that the proposed incentive levels are too high, is disingenuous and unconvincing. If such is the case, OTS agrees with that characterization.

The ALJ references the OTS position directly, where she states in the Recommended Decision that “OTS avers that it makes more financial sense to initially provide less generous payments to customers and subsequently raise the payment levels if the success level of the fuel switching program were less than

⁸ OTS does not formally respond in this Reply Exception to the portion of the Company's second Exception that argues against the requirement for high efficiency appliances because OTS did not address this Office of Consumer Advocate (“OCA”) position during the course of the proceeding. Having said that, OTS would not be opposed to the Commission adopting such a high efficiency replacement appliance requirement, as recommended by the ALJ, in its final Order concluding this proceeding. Recommended Decision, pp. 43-46. UGI-Electric Exceptions, pp. 26-31.

anticipated. OTS RB at 14.” OTS would contend that the Company apparently considers that the level of incentives can be adjusted in the future, as they are more than willing to seek to defend their overly generous proposed amounts by stating that, as quoted at page 37 of the Recommended Decision, “[I]f it turns out to be overly successful, the amount can be reduced in the future.” UGI Electric Stmt. 2R at 21; UGI Electric MB, at 39-40. Obviously then, such potential adjustments to the incentive levels can be made at a later date in response to the actual level of customer interest at the then applied incentive amounts.

Further, given the Company’s repeatedly expressed concerns that the success of their EE&C plan in reducing electricity consumption would adversely affect their bottom line to the extent that they would need to “accelerate”⁹ the filing of a base rate case, the logical approach is to have the plan start out at a lower incentives level and thereby perhaps mitigate the experienced level of reduced revenues. And in a practical sense, it is reasonable to anticipate that customers would better accept a subsequent ratcheting up of an incentive payment amount in order to expand participation in a program than they would a ratcheting down of the amounts when previous fuel switching customers had been paid the higher amount.

Also, given that capping incentive levels would reduce overall plan costs, OTS's stated opposition here to the granting of UGI-Electric's second Exception is

⁹ The degree of such claimed acceleration was never accurately quantified.

consistent with the rationale supporting the OTS Exception submitted in this proceeding. Said OTS Exception recommends Commission adoption of the stated OTS position that the EE&C Plan should be modified to limit total plan expenditures to 1.2% of UGI-Electric's total annual revenues, in recognition that the Company has only approximately 60,000 customers, a decidedly smaller customer base than the EDCs subject to Act 129 requirements.¹⁰

Finally, OTS reiterates that any EE&C plan that bootstraps a revenue recovery scheme cannot be cost-effective,¹¹ and as such, would not and could not be in the best interests of UGI's customers. From the perspective of customers, the "costs" of such a program must surely include their required additional contributions for "lost" revenues, whether it comes in the guise of an initial surcharge or a subsequently cashed in regulatory asset. OTS IB, pp. 20-23.

10 The OTS Exception points out that a designated total plan expenditure limit that would maintain costs at a lower percentage level than was allowed for the bigger EDCs subject to Act 129 would be reasonable and prudent here. OTS Exception, pp. 4-8; OTS IB, pp. 32-34; OTS RB, pp. 27-28.

11 The Secretarial Letter outlining the parameters for EE&C plans for smaller EDCs states: "[the Commission] 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." [Emphasis Added] Secretarial Letter, p. 2.

III. CONCLUSION

For the foregoing reasons, and those put forth in the OTS Initial and Response Briefs related to the issues addressed here, OTS respectfully requests that the Commission adopt the instant two OTS Reply Exceptions and incorporate the result into the final Order concluding this protracted proceeding. As such, Commission action consistent with these OTS Reply Exceptions results in the complete denial of UGI Utilities, Inc. - Electric Division's first Exception and, at the very least, denial of the part of their second Exception formally contested herein.

Respectfully submitted,



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Dated: August 1, 2011

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 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions**, dated August 1, 2011, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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