



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

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June 14, 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
(OTS) **Response Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

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

Enclosure
CDS/edc

cc: Parties of Record
Hon. Susan D. Colwell

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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 :**

**RESPONSE BRIEF
OF THE
OFFICE OF TRIAL STAFF**

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I. INTRODUCTION

Following the evidentiary segment of this proceeding that concluded with the May 4, 2011, hearing conducted by presiding Administrative Law Judge Susan D. Colwell, on June 2, 2011, the active parties filed their respective briefs pursuant to the previously established schedule, as follows:

- Initial Brief of UGI Utilities, Inc. - Electric Division
- Initial Brief of the Sustainable Energy Fund
- Main Brief of the Office of Small Business Advocate
- Initial Brief of the Office of Consumer Advocate
- Initial Brief of the Office of Trial Staff

Additionally, an *Amicus Curiae* Brief was submitted by a group interested in the outcome of this proceeding, consisting of the Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance and West Penn Power Industrial Intervenors, reflecting their collective opposition to UGI Utilities, Inc. - Electric Division's ("UGI-Electric" or "Company") proposal to recover lost revenues as part of its proposed Energy Efficiency and Conservation Plan ("EE&C Plan" or "plan").

The OTS Initial Brief identified and supported adoption of the primary OTS position opposing Commission approval of the Company's plan as presently submitted for a number of reasons, both individually and collectively, that are

further discussed here in this OTS Response Brief. The OTS Initial Brief also presented the OTS position that, *in the event* the Commission decides to consider modifications to the plan and include them in its final Order, the OTS recommendations set forth under the headings entitled “IV. Argument, C. Proposed Modifications to Filed Plan, Nos. 1, 2, 3, 4, & 5” should each be adopted by the Commission. Those OTS proposed modifications Nos. 1-5 were identified and listed in the OTS Initial Brief, per the agreed-upon common brief outline, as follows:

1. Elimination of Any Revenue Recovery Mechanism
2. Elimination or Modification to Fuel Switching Program
3. Inclusion of Peak Load Reduction Targets
4. Reduction in Total Plan Expenditure Levels
5. Recovery of Plan Costs by Customer Class

The majority of the OTS arguments and counter-arguments contained in this OTS Response Brief can be found in the section entitled “IV. Argument, B. Filed Plan, 1. Position Regarding Approval of Plan as Filed,” with further responsive argument found in the subsections within “C. Proposed Modifications to Filed Plan.”

This OTS Response Brief primarily focuses upon those contentions and assertions raised in UGI-Electric’s Initial Brief that seek to address the OTS overall opposition to the plan and those that seek to refute the specific OTS recommendations advanced in this proceeding. Certain discussions here in this

OTS Response Brief also reference and address a number of issues raised in other parties' initial briefs.

II. HISTORY OF THE PROCEEDING

The OTS Initial Brief provides a detailed history of the proceeding prior to briefing. OTS Initial Brief, pp. 5-9. As noted there, the Direct (OTS Stmt. No. 1), Rebuttal (OTS Stmt. No. 1-R) and Surrebuttal (OTS Stmt. No. 1-SR) Testimonies and an Exhibit (OTS Ex. No. 1) of OTS Witness Scott Granger were admitted into the record at the May 4, 2011, evidentiary hearing and were cited and extensively *referenced in the OTS Initial Brief.*¹ Said testimonies and exhibits present and provide the supporting rationale for the OTS position recommending denial of UGI-Electric's Petition (and accompanying plan) for a number of reasons. In particular, the Company's inappropriately includes a revenue recovery scheme and a fatally flawed fuel switching program.

The table of contents and the body of this OTS Response Brief again include the common headings and subheadings agreed to by the parties and approved by the ALJ for the structure of the briefs. Heading and subheadings that include detailed discussion in this OTS Response Brief are shown in bold type in the table of contents and body of this brief and those where OTS did not provide

¹ As stated in a footnote in the OTS Initial Brief, the agreed-upon structure and outline of the initial briefs separated the issues into a variety of subheadings, the totality of the OTS arguments on each particular issue may span more than one subheading and should be read together in support of each and every OTS recommendation. OTS IB, p. 5, fn. 6. We submit that this characterization is also applicable to the OTS arguments and counter-arguments presented in this Response Brief.

any responsive language are shown in regular type. Those headings and subheadings in the body of this brief without detailed responsive OTS language are followed by a brief notation to that effect.

III. SUMMARY OF ARGUMENT

OTS reaffirms its position detailed in the OTS Initial Brief in support of its primary recommendation and alternative modification proposals and respectfully submits that they merit adoption by Administrative Law Judge Colwell and the Commission. These positions presented as recommendations are valid and reflect OTS's representation of the public interest, and as such, should justifiably be adopted and made part of the ordering paragraphs of the final Order resolving the important issues litigated in this proceeding.

As stated in the OTS Initial Brief, OTS recommends denial of the UGI-Electric Petition seeking authority to institute an EE&C Plan as it is presently constructed. Again, *in the event* the Commission is inclined to authorize a plan with a number of the modifications proposed by non-Company parties to this proceeding, we submit that the OTS arguments and counter-arguments made in this OTS Response Brief regarding those proposed modifications to the plan are necessary and appropriate to ensure that a fair, constructive and viable plan is provided to UGI-Electric's customers.

UGI-Electric's Initial Brief appropriately acknowledged the Company's burden of proof to demonstrate that implementation of the plan is cost effective and in the public interest. Additionally, the best interest of customers is a primary

consideration, as reflected in Chairman Robert Powelson's statement dated December 17, 2009, where he said, "I wish to make it clear that, by today's action, we are in no way mandating that the smaller EDCs file EE&C plans of the scope mandated by Act 129, or even file EE&C plans at all." *See: Powelson Statement, p. 1.* Moreover, "I believe these [small] EDCs should only file plans if, after careful scrutiny, it is determined that doing so is in the best interest of their customers." [Emphasis Added] *Powelson Statement, p. 1.*

Again, OTS considers the plan as presently constructed to unworthy of Commission approval given (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 electric distribution service revenues; (2) the inclusion of a fuel switching plan that lacks not fuel neutrality, and is overly generous and coincidentally 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 relative to the smaller size of this EDC. OTS Initial Brief, p. 10.

In the event that the Commission decides during its deliberations to incorporate one or more modifications to the filed plan and produce a final Order for consideration of Company, the OTS testimony and exhibit entered into the record in this proceeding has identified a number of modifications to the Company's proposal that should be addressed and resolved by the Commission in the manner recommended by OTS. The issues giving rise to the OTS

recommended modifications set forth in this OTS Initial Brief and affirmed here have been summarized as follows:

- The Company's proposal to recover lost distribution revenue associated with the reduction in energy consumption as a result of the implementation of UGI's EE&C plan through the use of the proposed CD Rider.²
- The appropriateness of the Company's proposal that relies upon fuel switching to natural gas requires additional analysis and consideration.
- The lack of EE&C programs in the UGI's Plan designed specifically to achieve peak load reductions.
- The cost-effectiveness and prudence of UGI's proposed total expenditures to implement and manage the Plan.
- The Company's allocation of costs by customer classes including the avoidance of any cost subsidies between and/or among the classes.

OTS Initial Brief, pp. 10-11. OTS Stmt. No. 1, pp. 12-13.

As noted in the OTS Initial Brief, this is the first submitted EE&C plan by a smaller EDC not mandated to do so by Act 129 and will likely serve as a guide to the other smaller EDCs perhaps contemplating filing an EE&C plan. As such, the intense examination of the issues conducted by all parties will hopefully provide the ALJ and the Commission with a sufficiently full and complete record to enable them to provide a detailed rationale for their resolution of each issue.

² This issue is augmented by the Company's alternative proposal for regulatory asset treatment, first introduced in the rebuttal testimony of Company Witness McAllister to seek to recover the lost revenues in that manner rather than through a proposed CD Rider identified in the filing. UGI-Electric Stmt. No. 3R, pp. 7-10.

IV. ARGUMENT

A. Burden of Proof/Applicable Legal Standard

This issue was thoroughly identified and addressed in each party's initial brief. As stated in the OTS Initial Brief, Section 332(a) of the Public Utility Code, provides that the party seeking a rule or order has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a). OTS Initial Brief, pp. 11-13. It appears to be undisputed that the Company, as the party seeking Commission approval for its proposed EE&C Plan, bears the burden to affirmatively prove that its proposed plan is, by a preponderance of the evidence, cost-effective and in the public interest, a standard that includes the specific showing that it is necessary or proper for the service, accommodation, convenience or safety of the public and that they have met the applicable Commission rules, regulations, policy statements, directives and guidelines. The instant record demonstrates that the Company has failed to meet its burden and the Commission may justifiably deny the instant Petition and accompanying plan as presently constructed.

B. Filed Plan

1. Position Regarding Approval of Plan as Filed

For the reasons stated herein and those presented in detail in the OTS Initial Brief, OTS reiterates its primary recommendation that the Commission deny UGI-Electric's Petition and thereby reject the plan as filed (and supported by the Company throughout this proceeding) given the Company's failure to demonstrate that it is either cost effective or in the public interest. Again, OTS contends that

UGI-Electric's customers would be financially better off with no plan rather than being subjected to a defective plan proposed by the Company.

a. Revenue Recovery Mechanism

Regarding the important subject of the OTS and other parties' position that any revenue recovery mechanism simply does not belong in an EE&C plan, the UGI-Electric Initial Brief had this to say, at page 24:

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.

UGI-Electric Initial Brief, p. 24.

In response, OTS would state that the only contention above that could be considered to be subject to "no dispute" is that, as a general proposition and absent some concern for the public interest of their own, utilities generally do not act voluntarily to reduce their revenue levels. However, the Company's contention goes on to advance the erroneous assertion that an EE&C plan would, by definition, not be "viable" absent the inclusion of such a scheme to provide a guaranteed revenue level. This UGI-Electric contention presupposes that the results of any appropriately sized and properly administered EE&C plan, i.e. reduced electricity consumption, and thereby reduced revenues, would so erode a utility's profit margin that it would accelerate the filing of a base rate case seeking

additional revenues.³ Such is not necessarily the case and, in fact, is not a factor here by virtue of the clear acknowledgement of that fact by UGI-Electric's very own witness. Tr. pp. 109-110.

This nature of this acknowledgement is referenced in the OSBA Main Brief, at pages 14-15, where they accurately point out that Company Witness McAllister has completely undermined the Company's repeated contention that an escalation of a base rate filing would likely result if no revenue recovery mechanism is included in the Company's proposed plan. In its Main Brief, OSBA references the Company's own worst case scenario of ten percent (10%) rate of return resulting from a successful EE&C plan and then points out that the transcript reflects Company Witness McAllister's statement that a drop to nine and one half percent (9.5%) would be the point at which the company would begin "to start seriously considering the base rate process." OSBA MB, pp. 14-15. Tr. pp. 109-110. Thus, there is no legitimate basis to give any credence to the Company's assertion that, without a revenue decoupling mechanism of some type, UGI-Electric would have to file a base rate case sooner rather than later. OSBA MB, pp. 14-15. Tr. pp. 109-110.

Again referencing the page 24 excerpt from the Company's Initial Brief reprinted above, we further discover that the Company compounds the tenuous

³ This argument also completely ignores any aggregate reduction in operating expenses that may offset, and perhaps even exceed, the level of experienced reduced revenues, the very type of scrutiny provided during the course of a base rate proceeding.

nature of their argument where they go on to contend that “[T]his Commission recognized the point . . .,” when in fact the Commission did nothing of the kind as it relates to the “viability” of the plan submitted here. First, the Company argument completely ignores the fact that Act 129 prohibited the subject electric distribution companies (“EDCs”) from incorporating a revenue recovery scheme of any sort into their plan. The Legislature thus clearly indicated that the inclusion of revenue recovery should not be included as part of an EE&C Plan. OTS submits that the size of the EDC is simply not relevant and the Commission should follow the clear legislative intent of Act 129 and reject any plan that includes a revenue decoupling component. Further, had the Legislature intended to have smaller EDCs be permitted to seek to include revenue recovery mechanisms, they could certainly have done so in Act 129.

OTS submits that the Commission is confronted here with a proposed EE&C plan that appears designed primarily to guarantee a certain level of revenues, channel business to gas and propane affiliates and offer overly generous incentives to current electric customers to switch to gas and propane appliances under the pretext of advancing the laudable goals of electricity conservation.

It seems abundantly clear that, if as the Company contends, the plan’s success in reducing electricity consumption would adversely affect its bottom line and accelerate the filing of a base rate case, then by definition, the scope and extent of their proposed plan is too large in relation to the relatively smaller size of UGI-Electric and therefore the OTS alternative recommendation to modify the

plan to scale it back to a more appropriate level is the better and more logical solution.

Regarding the Company's consideration of the appropriate scope and nature of an EE&C plan commiserate with the size of UGI-Electric, Company

Witness Rabb responded during cross examination as follows:

Q. All right. Would you agree, everything else being equal, that a smaller EDC is better able to absorb total costs associated with the EE&C plans when the costs are lower rather than higher, everything else being equal?

A. Well, I never really thought about that particular question.

Tr. p. 27.

The concept embodied in Act 129, that an EDC may only recover any lost distribution revenues due to reduced energy consumption in a Section 1308 base rate case filing, remains valid for this or any other jurisdictional EDC regardless of size. The Company's repeated assertions regarding their need for guaranteed revenue recovery seeks to draw attention away from the simple fact that they always have the right to file a base rate case and demonstrate the reduced level of revenues, either as a result of implementing a successful EE&C plan or for any other reason. The special treatment the Company seeks here is simply unfair to their ratepayers as it unduly focuses upon just one aspect of the ratemaking formula to the exclusion of all others. The Commission has not been receptive to revenue decoupling because, whether implemented by surcharge or regulatory asset

treatment, it does not result in just and reasonable rates and therefore is not in the public interest.

As such, any provision that guarantees a revenue level to a utility without considering all relevant factors runs contrary to every fundamental ratemaking principle established in Pennsylvania and denies OTS and other parties the necessary opportunity to properly scrutinize and consider the many important and relevant factors that go into establishing just and reasonable rates. This necessary scrutiny can only occur during a base rate proceeding. And again, even the *outcome of a base rate proceeding establishes a level of rates designed to give the subject utility the opportunity to earn the identified revenue level and provides no guarantee that such a revenue level will be reached.* OTS Initial Brief, pp. 14-15.

b. Fuel Switching Program

The UGI-Electric Initial Brief correctly references that OTS recommends the elimination of the proposed fuel switching program as part of the approved EE&C plan in the event the Commission is considering proposed modifications rather than simply denying the entire plan. UGI-Electric Initial Brief, pp. 37-41. OTS Initial Brief, pp. 26-30. As noted in the OTS Initial Brief, OTS recommends the elimination of the fuel switching program because (1) it is not “fuel neutral,” (2) the level of incentives paid to customers that switch to natural gas appliances it is overly generous to the financial detriment of other customers; and (3) UGI-Electric’s parent corporation UGI Utilities, Inc. receives a triple benefit as a result of such programs. OTS Initial Brief, pp. 26-27.

OTS recommends that the entire fuel switching program be removed from UGI-Electric's proposed EE&C Plan because it is not properly part of an EE&C plan and UGI-Electric's proposal is not fuel neutral. OTS Stmt. No. 1-R, pp. 3-5. Furthermore, UGI-Electric has failed to demonstrate why the Commission should approve the proposed fuel switching program based on the standards set forth in the Commission's Act 129 Fuel Switching Working Group Staff Report, provided in the record as OTS Exhibit No. 1, Schedule No. 3.

By definition, UGI-Electric's proposed fuel switching program is not fuel neutral since it is only open to natural gas, propane and now solar thermal units and otherwise does not offer any of the alternative energy sources listed in Tier I of the Commonwealth's alternative energy portfolio standards. The Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1 *et seq.* includes both Tier I and Tier II alternative energy sources. Tier I alternative energy sources include solar photovoltaic, wind, low impact hydro, geothermal, biologically derived methane gas, fuel cells, biomass energy, and coal mine methane. Tier II alternative energy sources include waste coal, distributed generation systems, demand side management, large scale hydropower, municipal solid waste, wood pulping and manufacturing by-products, and integrated coal gasification.

If however, for some reason the Commission authorizes the inclusion of a fuel switching program as part of UGI-Electric's EE&C Plan, OTS recommends that, at the very least, all Tier I alternative energy sources be included as available choices, and cannot be considered fuel neutral simply by adding just solar thermal

systems (as proposed in the Company/SEF Stipulation) to the narrow group consisting of just UGI-Electric affiliates' gas and propane. OTS Stmt. No. 1-R, pp. 3-5.

Fundamental fairness dictates that the ratepayers paying for the fuel switching program should be granted the widest choice of energy sources and the decision should not be left up to the Company to arbitrarily limit those choices, particularly given that UGI-Electric's corporate parent has a profit motive for focusing on natural gas and propane.

c. Generous financial incentives to switch fuels

On this subject, the Company's Initial Brief references its Witness Raab's comment regarding the level of financial incentive to induce customers to switch to gas, characterizing his testimony by stating that "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." *Here*, citing to UGI-Electric's argument in its Initial Brief at pp. 39-40, rather than to the precise testimony of its witness.

In response and only assuming hypothetically that the Commission would allow for the inclusion of some version of a fuel switching program, OTS would assert that, given the Company's repeated contentions about the cost effectiveness of the proposed plan, 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 programs were less than anticipated. This

approach could be accomplished by having the Commission allow for maximum payment levels while initially authorizing payment levels at a lower and more reasonable level.⁴

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

The OTS Initial Brief points out numerous elements of the proposed plan that OTS contends fundamentally fail to adhere to the guidelines set out by the Commission for the construction of such smaller EDC EE&C plans. OTS Initial Brief, pp. 19-20. The Commission made it clear that "certain elements of the Act 129 EE&C program are instructional and applicable to any prudent and cost-effective EE&C program." OTS Stmt. No. 1, pp. 3-4. Secretarial Letter, p. 1. The Commission also stated that "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." OTS Stmt. No. 1, pp. 3-4.

The cited language from the Secretarial Letter makes it clear that any voluntary plan submitted for Commission approval can and should adhere to the requirements of Act 129. As previously noted, Act 129 specifically prohibited the inclusion of revenue recovery as part of the plan and allow for the reflection of *reduced revenues only in a subsequently filed base rate case*.

Faced with the clear Act 129 prohibition of revenue decoupling, UGI-Electric seeks to avoid its burden of demonstrating why either one of its revenue

⁴ And of course, UGI-Electric will receive a reimbursement for all incentives paid to customers. OTS Initial Brief, p. 17.

recovery schemes should be allowed by arguing instead that it would be legal for the Commission to do so. That argument fails because it never addresses the issue of why the Commission should do so and instead simply threatens the acceleration of a base rate case filing. In the final analysis, the Company did not and cannot put forth a convincing argument as to why they are entitled to such drastic and special revenue guarantee treatment that runs directly contrary to fundamental ratemaking principle and the clear intent of the Legislature as expressed in the prohibition found in Act 129.

3. Filed Plan's Cost Effectiveness

In its Initial Brief, the Company states that the Commission adopted the TRC Test as its single standard for determining the cost-effectiveness of EE&C plans" UGI-Electric Initial Brief, p. 12. OTS responds that the Commission's adoption of the TRC Test cannot alone be the deciding factor and certainly didn't consider the situation here, where not only is there a proposal to ensure a certain revenue recovery mechanism, but there is also a scheme to channel business to affiliated gas and propane entities. Thus, the Commission cannot simply apply the TRC Test in a vacuum without seriously considering all the other important and relevant aspects of UGI-Electric's proposed plan.

The inclusion of a guaranteed revenue recovery mechanism surely must raise a legitimate question as to whether just meeting the TRC Test is appropriate here. From a customer's perspective, any monies required to be paid in addition to the program costs is an additional "cost" to him or her. And that is precisely what

the Company seeks here, a mechanism to collect more monies from ratepayers than was allowed for EDCs under Act 129.

The Company's contention, that simply meeting the TRC Test and ignoring the other out-of-pocket charges, i.e. "costs" to customers is all that the Commission need consider, is unsupportable. Again, from a customer's perspective, paying ten dollars (for example) for plan expenditures and an additional ten dollars to maintain the Company's revenues levels still "costs" twenty dollars, not ten.

As pointed out in the OTS Initial Brief, the Commission states a number of times that if a small EDC cannot design, implement and administer a cost effective EE&C plan that will assist all electric customers in mitigating retail electric rate increases and ensure affordable electric service, then that small EDC should reconsider the prudence of implementing its EE&C program in the first place.

OTS Initial Brief, p. 20. Secretarial Letter, pp. 1-3.

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

In its Initial Brief, the Company reaffirms its witnesses' stated view that it *retains the ability to withdraw its submitted EE&C Plan if the Commission removed its proposed revenue recovery mechanism, or for that matter, made any changes deemed unacceptable to them.* UGI-Electric Initial Brief, pp. 14-17. The Company further speculates (incorrectly) that "... the OTS will argue it does not." UGI-Electric Initial Brief, p. 14.

Presumably, the Company arrived at this erroneous assumption regarding the OTS position on the issue due to the OTS cross examination of the Company witnesses at the evidentiary hearing. Tr. pp. 96-97. Consistent with the discussion of the matter in the OTS Initial Brief, the cross examination was designed merely to point out that the entire litigation of this proceeding, a length and breadth that was in large part necessitated by the Company's inclusion of unpalatable components to its plan, may be a complete waste of administrative time and energy if the Company withdraws its plan following the entrance of the Commission Order.⁵

Again, the OTS opposition to the submitted plan is based upon our thorough scrutiny of all its proposed components as devised by UGI-Electric and our conclusion that approval is not in the public interest. As to how this fatally flawed plan is finally removed, OTS has no preference regarding whether such an outcome be achieved through withdrawal by the Company or denial by the Commission, either result being consistent with the OTS primary recommendation in this proceeding.

⁵ And interestingly, the Company first argues that the issue is yet ripe and then proceeds to present argument on the issue. UGI-Electric Initial Brief, pp. 14-17.

C. Proposed Modifications to Filed Plan

1. Elimination of Any Revenue Recovery Mechanism

In the event the Commission entertains modifications to UGI-Electric's EE&C plan, OTS and a number of other parties to this proceeding have recommended rejection of the proposal to include a revenue recovery mechanism as part of the Company's EE&C Plan.

As stated in the OTS Initial Brief in the heading "Position Regarding Approval of Plan as Filed," the establishment of such a revenue level guarantee mechanism for any reason is completely contrary to well established and fundamental ratemaking principles as it fails to allow for the necessary thorough review and analysis that can only occur during a base rate proceeding. And again, even a base rate proceeding is to determine a level of rates designed to give the subject utility the opportunity to receive the identified revenue level rather than providing a guarantee of that level.

a. Legislative Intent

The underlying concept of a prohibition against the inclusion of a method to recover lost revenues that is expressly part of Act 129 evidences the Legislature's clear disapproval of a revenue recovery as a component of an EE&C plan and should be similarly applied here. OTS Initial Brief, pp. 24-26. Not surprisingly, the Company in its Initial Brief sees things differently and instead argues that "[I]f the legislature had wanted to require small EDCs to file EE&C plans and to prevent them from recovering the resulting lost revenues outside the

context of a base rate case, it would have drafted the statute to include small EDCs within the provisions of Section 2806.1.” UGI Initial Brief, p. 19.

OTS would respond that there is no reason to accept this Company interpretation of the statute. In fact, it could be even more reasonable to state that the Legislature was simply disinclined to require smaller EDCs to implement an EE&C plan, but that any plan voluntarily filed should similarly have no revenue recovery provision.⁶ The Company’s argument that Legislature’s reason for excluding smaller EDCs from the requirements of Act 129 was due to a recognition of a smaller EDC’s need to have a revenue recovery mechanism is patently unsupported and should be rejected by the Commission.

b. Reliance upon Commission’s 1993 DSM Order

UGI-Electric’s reliance at page 21 of its Initial Brief in a Commission 1993 DSM Order, at 80 Pa. P.U.C. 608, for the contention that “there is no legal impediment to the Commission’s adoption of UGI’s lost revenue recovery proposal ...” attempts to have the Commission ignore the undisputed fact that such revenue decoupling is not part of traditional ratemaking here in the Commonwealth.

⁶ There could also be any number of reasons, many more likely, why the Legislature did not include smaller EDCs within the Act, including its recognition that the relatively smaller amount of electricity that could be saved even with a wildly successful plan by a smaller EDC, the fact that mandating an EE&C plan for a smaller EDC may not be cost effective, and/or the Legislature’s observation that a smaller EDC may not be in seeking a rate hike as often as a large EDC (where recognition of the reduced revenues would be a regular component of the ratemaking formula).

Several factors not cited by the Company serve to distinguish the Commission's DSM Order from the current revenue recovery proposal. First, the Legislative intent expressed in Act 129 is to treat lost revenues from a conservation program within the context of a base rate proceeding as the normal reflection of the test year level of revenues, rather than through some special regulatory asset treatment. This clear Act 129 directive for such treatment of lost revenues did not exist some eighteen years ago at the time the DSM Order was entered. In that regard, the provisions of Act 129 reaffirm the traditional ratemaking treatment of reflecting annualized revenues for the test year at present rates. This normal ratemaking treatment will recognize revenues lost as a direct result of reduced electricity consumption due to a successful EE&C plan. As such, the Company has its reflection of lost revenues assured. The Commission should presently adhere to the current and existing legislative approach and recognize that the DSM Order has been superseded by subsequent action of the Legislature and thus is not controlling here.

Another factor not mentioned by the Company is that the DSM programs authorized by the Commission back in 1993 were limited to five years, unless extended through further Order of the Commission. 80 Pa. P.U.C. 623. The Commission did not act at a later date to extend that Order. As such, the majority of lost revenues subject to the special regulatory asset treatment would be experienced during that limited timeframe. The Commission likely considered the

limited timeframe of the DSM programs and the resulting constrained revenue losses when allowing for the regulatory asset treatment in that circumstance.

OTS submits that that the situation surrounding the Commission's decision to allow regulatory asset treatment in its DSM Order are not sufficiently analogous to the current, far different circumstances here involving a voluntary program. The Company's citation to one distinguishable proceeding some eighteen years ago is hardly persuasive precedent or adequate justification for allowing either of UGI-Electric's proposed revenue guarantee schemes in this proceeding.

c. Necessary Ex Post Prudency Review

OTS concurs with the position advance by OSBA in its Main Brief that, given the fact that UGI-Electric is not subject to Act 129's targets and penalties, the Commission should require an ex post prudence review of the plan's costs. OSBA Main Brief, p. 7. There, OSBA points out that unlike the larger EDCs, UGI-Electric lacks the financial incentive to assure that the overall cost-effectiveness of its EE&C Plan is comparable to what has been achieved by the larger EDCs and that subjecting the recovery of EE&C costs to an after-the-fact prudence review would provide UOI Electric with such an incentive. OSBA Main Brief, p. 7. Later in its Main Brief, OSBA also accurately observes that such an ex post review of the EE&C costs is necessary if the Commission approves the Company's proposal to require nonparticipating customers to pay subsidies to participating customers. OSBA Main Brief, p. 11.

OTS would again point out the extremely important consideration that any Commission approval of the Company's plan that includes either an additional revenue recovery rider or regulatory asset treatment for a lower revenue level would very likely lead a good number of jurisdictional utilities (currently charging rates under traditional ratemaking formulas) to quickly make filings with the Commission seeking similarly favorable treatment to ensure their own level of guaranteed revenues for the foreseeable future.

2. Elimination or Modification to Fuel Switching Program

As discussed earlier in this OTS Response Brief and as fully addressed in the OTS Initial Brief, OTS recommends the elimination of the fuel switching program *in the event* the Commission entertains modifications to UGI-Electric's EE&C plan. The Company's fuel switching program must be eliminated given that (1) it is not "fuel neutral," (2) the level of incentives paid to customers that switch to natural gas appliances is overly generous to the financial detriment of other customers; and (3) UGI-Electric's parent corporation UGI Utilities, Inc. receives a triple financial benefit as a result of such programs. OTS Initial Brief, pp. 26-30.

The plan as proposed unduly steers UGI-Electric customers towards natural gas as an alternative fuel source. OTS Stmt. No. 1, p. 18. While the Company's initially filed EE&C plan's proposed fuel switching programs encompass thirteen pages, the word "propane" appears only once, and the words fuel oil, solar,

biomass, and solar thermal do not appear at all. EE&C Plan, pp. 57-69. OTS Stmt. No. 1, p. 18.

During the initial implementation of Act 129, a number of questions were raised by interested parties regarding fuel switching programs and their place within Act 129 EE&C Plans. OTS Stmt. No. 1, pp. 14-17. The Fuel Switching Work Group (“FSWG”) was initiated by the Commission in June 2009 to identify, research, and address the Act 129 issues related to fuel switching. The FSWG presented its Staff Report (“FSWG Staff Report”), admitted into the record here as OTS Exhibit No.1, Sch. 3, to the Commission on April 30, 2010, and the Commission issued a Secretarial Letter on May 21, 2010 (“FSWG Secretarial Letter”), admitted as OTS Exhibit No. 1, Sch. 4, adopting the recommendations contained in the FSWG Staff Report. OTS Stmt. No. 1, pp. 14-17.

Although the FSWG could not reach a true consensus on any of the addressed issues, the FSWG ultimately recommended that any fuel switching program that passes a cost-effectiveness test and assists the EDC in meeting its consumption and demand reduction targets must also be “fuel neutral” before the Commission will consider approving its implementation. *See:* FSWG Staff Report, pp. 23-24. OTS Stmt. No. 1, pp. 14-17. The FSWG noted that fuel switching programs should include natural gas, propane, fuel oil, solar, and even other fuels such as biomass and solar thermal; stating that this methodology would provide ratepayers with an opportunity to evaluate their specific situation and determine which energy source best meets their needs while at the same time

reducing electricity consumption and demand. *See*: FSWG Staff Report, pp. 22-23.

Additionally, the Commission recommended changes to the Total Resource Cost Test needed to appropriately analyze the costs and benefits of energy efficiency measures that involve switching from electricity to another fuel source. *See*: FSWG Secretarial Letter, p. 3. OTS Stmt. No. 1, pp. 14-17. As stated by OTS Witness Granger, the overriding concern of the Commission and the stakeholders was the danger that EE&C Plan fuel switching programs would be used to steer customers away from electricity and toward a single alternative fuel source at the exclusion of all other viable alternative fuel sources. OTS Stmt. No. 1, pp. 14-17.

In seeking to justify this proposed plan's fuel switching programs, the responsibility falls upon UGI-Electric to make available all alternative fuel sources. The Company's attempt to evade that responsibility by contending that the onus is upon the other parties to demonstrate that the alternative fuel source not included in UGI-Electric's plan must first be demonstrated by another party to be cost effective to merit inclusion must fail. The availability of all alternative fuel sources gives the customers the opportunity to decide whether or not they want to use them, and the Company's limitation of such fuel sources to their affiliates' gas and propane (and now solar due to the agreement with SEF), and the accompanying financial incentives limited to those sources, denies the customers that opportunity.

3. Inclusion of Peak Load Reduction Targets

The UGI-Electric Initial Brief provides excerpts from the applicable section of the Commission's Secretarial Letter that states, "Each petition must contain at least the following: ... (3) proposed energy consumption or peak demand reduction objectives or both." UGI-Electric Initial Brief, p. 44. Secretarial Letter, p. 1. Granted then, the Commission has not required that a petition include the specific identification of both objectives, but that does nothing to diminish the OTS recommendation that the proposed plan should be modified given that peak load management and peak load reduction are essential parts of the management of the larger electric power grid and should be an integral part of any small EDC's voluntary EE&C plan.⁷ OTS Initial Brief, p. 31. OTS Stmt. No. 1, p. 20.

Further, while the Company contends generally that its plan anticipates peak load reductions, the Company clearly acknowledges that it did not design the programs and measures with the specific purpose of achieving any peak load reduction targets." UGI-Electric Initial Brief, pp. 44-45. OTS Initial Brief, p. 32, fn. 27.

The Company's argument fails to acknowledge that any peak demand reduction achieved by even a smaller EDC benefits the electric power grid. Thus,

⁷ We again point out that the larger EDCs subject to the requirements of Act 129, must reduce consumption by 1% by May 31, 2011, and by 3% by May 31, 2013, and that in addition to the reduced consumption, those EDCs must reduce annual system peak demand by a minimum of 4.5% in the 100 hours of highest demand by May 31, 2013.

if the Commission decides that pursuing consumption reduction and peak demand reductions within UGI's electric service territory are worthwhile conservation and public policy goals, then the OTS position can and should prevail and more clearly defined and targeted peak load reduction programs should be added as part of any EE&C plan approved by the Commission.

4. Reduction in Total Plan Expenditure Levels

The OTS Initial Brief argues for a modification to the Company's filed plan to provide for a reduction in the amount of overall plan expenses due to the smaller size of UGI-Electric with only approximately sixty thousand customers. OTS Initial Brief, pp. 32-34. In recognition of this small customer base, OTS recommends that the most prudent and appropriate course of action is for the Commission to provide for a more limited plan expenditure level representing 60% of the Act 129 defined Large EDC 100,000 customer base should be factored into the proposed level of plan expenditures. OTS Initial Brief, pp.33-34. OTS Stmt No. 1, pp. 23-24.

In response, the Company attempts to disparage the OTS rationale for its recommended reduced plan expenditure level by inappropriately skewing the OTS's reasoning and applying it to justifying increasing a plan's maximum expenditure level, stating that if it were applied to the large EDCs subject to Act 129, the budget limits for their plans could allow for expenditures representing 30% of their annual revenues. OTS submits that the ALJ and the Commission must surely see that the Company's argument to twist the OTS rationale for

reducing the plan expenditure levels for this small EDC in a manner clearly not intended is misguided and unpersuasive.

It is again important to emphasize that this OTS recommendation to modify the plan to scale it back to a more appropriate level is the perfect remedy for the Company's contention that their EE&C plan's success in reducing electricity consumption would adversely affect their bottom line and accelerate the filing of a base rate case. Accepting the Company's own argument, then by definition, the scope and extent of their proposed plan is too large in relation to the relatively smaller size of UGI-Electric since it would represent too large a decrease in revenues.

As such, OTS reiterates its recommendation that the Commission modify the Company's submitted plan so as to amend the expenditure limit from 2.0% to a more appropriate 1.2% (60% of 2%) of UGI-Electric's total annual revenue as of December 31, 2006, in conjunction with the Commission's adoption of all the other OTS recommended modifications presented in this proceeding. OTS Stmt. No. 1, pp. 23-24.

5. Recovery of Plan Costs by Customer Class

As explained in the OTS and other parties' initial briefs of the parties, this issue has been resolved by the parties and requires no further briefing. OTS Initial Brief, pp. 34-36.

6. Expansion or Modification of Customer Education

OTS did not present any specific recommendation regarding this subject.

7. Funding Percentage for Residential Lighting

OTS did not present any specific recommendation regarding this subject.

8. Modification to Commercial Lighting

OTS did not present any specific recommendation regarding this subject.

9. Notice Period for Change in Plan Rider Charges

OTS did not present any specific recommendation regarding this subject.

10. Necessity for Prudence Review of Plan

OTS did not present any specific recommendation regarding this subject.

11. Applicability of the Plan to Small Business Customers

OTS did not present any specific recommendation regarding this subject.

12. Other Modifications

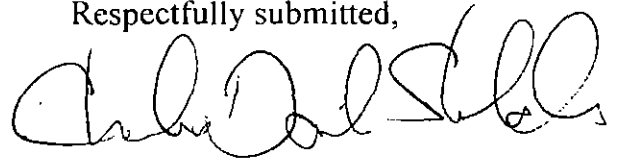
OTS did not present any additional modifications beyond those identified.

V. CONCLUSION

For the reasons set forth in this OTS Response Brief, as well as those presented in the OTS Initial Brief, the Office of Trial Staff respectfully requests that presiding Administrative Law Judge Colwell and the Pennsylvania Public Utility Commission adopt the OTS primary recommendation to deny the instant Petition and reject the Company's EE&C plan as submitted. The Company has simply failed to meet its burden of proof to demonstrate that implementation of the plan is cost effective or that such implementation is in the public interest. Nor has the Company proven that the plan as filed is in the best interest of customers.

In the event the Commission determines that the inclusion of certain modifications recommended by OTS (and other parties to the proceeding) would render a plan in the best interest of customers, OTS has proposed such modifications and recommends their adoption by the Commission and their inclusion in the Order concluding this instant proceeding.

Respectfully submitted,



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Dated: June 14, 2011

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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 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Response Brief**, dated June 14, 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):

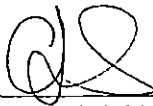
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