COMMONWEALTH OF PENNSYLVANIA

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August 1, 2011

HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: UGI Utilities, Inc. – Electric Division Energy Efficiency and Conservation Plan
Docket No. M-2010-2210316

Dear Secretary Chiavetta:

I am delivering for filing today the original plus nine (9) copies of the Reply Exception, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Cheryl Walker Davis
Office of Special Assistants

Parties of Record

Robert D. Knecht

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

UGI Utilities, Inc. - Electric Division :
Energy Efficiency and Conservation Plan : Docket No. M-2010-2210316

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REPLY EXCEPTION
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

Steven C. Gray
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For: William R. Lloyd, Jr.
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Dated: August 1, 2011

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I. INTRODUCTION

The act of October 15, 2008 (P.L.1592, No. 129) ("Act 129") required each electric distribution company ("EDC") with at least 100,000 customers to develop and file an Energy Efficiency & Conservation Plan ("EE&C Plan") with the Pennsylvania Public Utility Commission ("Commission") for approval. Moreover, Act 129 required that each EE&C Plan include a variety of EE&C measures to reduce overall and peak load consumption and that each measure be financed by the customer class that receives the direct energy and conservation benefit of that measure. *See* Section 2806.1 of the Public Utility Code, 66 Pa. C.S. § 2806.1.

EDCs with fewer than 100,000 customers are specifically exempted from the requirements of Act 129. *See* 66 Pa. C.S. § 2806.1(l). However, on December 23, 2009, the Commission issued a Secretarial Letter at Docket No. M-2009-2142851 ("*Secretarial Letter*") addressing the question of the filing of EE&C Plans by those small EDCs on a voluntary basis. *See Voluntary Energy Efficiency and Conservation Program*, Docket No. M-2009-2142851 (*Secretarial Letter* of December 23, 2009).

In a statement that accompanied the *Secretarial Letter*, Commissioner Robert F. Powelson (now the Chairman) observed that "these EDCs should only file plans if, after careful scrutiny, it is determined that doing so is in the best interest of their customers." Statement of Chairman Robert F. Powelson, Docket No. M-2009-2142851 (Dated December 17, 2009) ("*Powelson Statement*").

II. HISTORY OF THE PROCEEDING

On November 9, 2010, UGI Utilities, Inc. – Electric Division ("UGI Electric" or the "Company") filed a Petition for Approval of its Energy Efficiency and Conservation Plan ("*Petition*") with the Commission at Docket No. M-2010-2210316.

On November 29, 2010, the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and an Answer to the *Petition.*

On January 5, 2011, a prehearing conference was held before Administrative Law Judge ("ALJ") Susan D. Colwell.

On March 17, 2011, the OSBA served the direct testimony of its witness, Robert D. Knecht.

On April 7, 2011, the OSBA served the rebuttal testimony of Mr. Knecht.

On April 21, 2011, the OSBA served the surrebuttal testimony of Mr. Knecht.

On May 4, 2011, an evidentiary hearing was held before ALJ Colwell.

On June 2, 2011, the OSBA submitted its Initial Brief.

On June 14, 2011, the OSBA submitted its Responsive Brief.

On July 15, 2011, the Commission issued ALJ Colwell's Recommended Decision ("RD").

On July 25, 2011, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), and UGI Electric filed Exceptions to the ALJ's RD.

The OSBA files this Reply Exception in response to the Exceptions filed by UGI Electric.

III. REPLY EXCEPTION

The ALJ properly decided rejected lost revenue recovery. (UGI Electric Exception No. 1)

A. Summary

In its Exceptions, UGI Electric asserted a series of reasons why the Company should be permitted to recover the distribution revenue lost as a result of the operation of UGI Electric's EE&C Plan. *See* UGI Exceptions, at 1-24. The Company concluded, as follows:

> The Commission should reject the R.D.'s disallowance of a lost revenue recovery mechanism and approve one of the mechanisms proposed by UGI Electric so that this significant disincentive to voluntary EE&C plan implementation is removed.

UGI Exceptions, at 3.

By way of review, the *Petition* contains a revenue decoupling mechanism, *i.e.*, the Conservation Development Rider ("CD Rider"), both in the original filing and as advocated by UGI Electric throughout this proceeding. This decoupling mechanism is a fatal flaw in the *Petition* and a violation of both Act 129 and the direction provided by the Commission in the *Secretarial Letter*. OSBA witness Mr. Knecht summarized the CD Rider, as follows:

> The Company proposes that an adjustment mechanism, termed the Conservation Development Rider ('CDR'), would automatically increase the Company's distribution rates for revenues that are theoretically lost as a result of deemed reductions in consumption associated with the EE&C Plan proposed in this proceeding. I refer to these reductions in consumption as 'deemed' reductions, because they would not be directly measured. Deemed reductions would be determined based on the specific conservation measures adopted, and the technical parameters embedded in the Technical Reference Manual ('TRM') or other sources. The CDR is a partial 'revenue decoupling' mechanism, in that the Company's revenues would be independent (decoupled) from one form of volume variation.

OSBA Statement No. 3, at 1.

As an alternative to the CD Rider, the Company proposed the use of a deferred regulatory asset to recover the assumed lost distribution revenue margins in a future base rate case. UGI Electric Exceptions, at 1. Mr. Knecht testified in regards to the Company's alternative, as follows:

> The regulatory asset proposal suffers from the same single-issue ratemaking problem as the CDR. The regulatory asset would compensate UGI Electric for any deemed loss of revenues associated with the EE&C Plan, but would not permit offsetting adjustments to be considered. Moreover, as UGI Electric's current rates appear to exceed its costs based on its financial filing, deferring costs in a regulatory asset would be doubly inequitable, in that it would require future generations of UGI Electric's ratepayers to pay for the Company's over-recovery of costs today.

OSBA Statement No. 3, at 3.

UGI Electric's proposed CD Rider, and the regulatory asset alternative, are unlawful revenue decoupling mechanisms. The fact that the Company submitted its *Petition* on a voluntary basis does not resolve the unlawfulness of its CD Rider and regulatory asset alternative. The Commission should uphold the ALJ's recommendation to reject the Company's proposed CD Rider as well as UGI Electric's alternative proposal for regulatory asset treatment for the distribution losses.

B. The Legal Basis for the Denial of Decoupling

1. Act 129 and the *Secretarial Letter*

As UGI Electric acknowledged, Act 129 controls the EE&C Plans for larger EDCs. UGI Electric Exceptions, at 3. Specifically, Section 2806.1(k)(1) provides for an EDC's full recovery of the "reasonable and prudent" costs of its EE&C Plan. Furthermore, Section 2806.1(k)(2) prohibits revenue decoupling. Section 2806.1(k)(3) allows an EDC to reflect any anticipated conservation-related sales decline in the forecast used to calculate the revenue requirement in its

next distribution base rate case. Thus, the statute allows EDCs to seek to avoid the future loss of distribution revenue margins while prohibiting them from recovering those losses retroactively.

However, the Company asserted:

> The statute could not be clearer in this regard, and the R.D.'s attempt to amend the statute by extending the prohibition on lost revenue recovery to UGI Electric violates fundamental rules of statutory construction. If the legislature had wanted to require smaller EDCs to file EE&C plans and to prevent them from recovering the resulting lost revenues outside of the context of a base rate case, it would have drafted the statute to include smaller EDCs within the provisions of Section 2806.1. It did not. Rather, it expressly excluded smaller EDCs from the provisions of the Act.

UGI Electric Exceptions, at 3.

The OSBA agrees with UGI Electric that Act 129 expressly excludes smaller EDCs, such as the Company, from the mandates of Act 129. However, nowhere in the UGI Exceptions does the Company address the fact that the Commission itself has provided guidance on this issue. In the *Secretarial Letter*, the Commission recognized that small EDCs such as UGI Electric might file EE&C Plans that would vary somewhat from the mandates set forth in Act 129. Nevertheless, the Commission envisioned a voluntary EE&C Plan that would closely follow Act 129, not depart from Act 129 on such a fundamental principle as the prohibition on revenue decoupling. Specifically, in the *Secretarial Letter*, the Commission stated, as follows:

> 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.

Secretarial Letter, at 1.

Furthermore, Chairman Powelson observed as follows:

> I am extremely cognizant of the fact that the Legislature specifically exempted these companies from the requirements set forth in Act 129, which mandated EE&C plans for EDCs with

> 100,000 customers or more. 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.
>
> I believe these EDCs should only file plans if, after careful scrutiny, it is determined that doing so is in the best interest of their customers. Further, companies filing plans should determine the proper scale and scope of the measures in their proposed plans; in many cases it may be prudent to file plans that are less expansive, with lower reduction targets, than those filed by the larger EDCs.

Powelson Statement, at 1.

Apparently, the Company has either overlooked the *Secretarial Letter*, or simply has failed to take the *Secretarial Letter* into account. When taken together, Act 129, the *Secretarial Letter*, and the *Powelson Statement* make it clear that the *Petition* is not in conformance with the Commission's view on the recovery of lost distribution revenue margins.

2. Section 1319 and *PIEC*

Contrary to UGI Electric's contention, Section 1319 of the Public Utility Code, 66 Pa. C.S. § 1319, does not provide authority for the Company's proposed CD Rider or its alternative of treating lost distribution revenue margins as a regulatory asset for possible future recovery.

In its Exceptions, UGI Electric argued, as follows:

> Section 1319 of the Public Utility Code, 66 Pa.C.S. § 1319, which directs the Commission to allow the recovery of 'all prudent and reasonable costs associated with the development, management, financing and operation' of a 'conservation or load management program,' provides all the legal authority necessary for the Commission to approve recovery of lost revenues as part of a voluntary EE&C plan. Indeed, the Commission's *1993 DSM Order* did just that. In that case, the Commission expressly relied on Section 1319 as the proper statutory vehicle to 'in effect, jump start the DSM process' by removing the 'significant disincentives to the initiation of DSM programs' by adopting a 'special rate making mechanism' that featured a lost revenue recovery component. *1993 DSM Order*, 80 Pa.P.U.C. 608, 623.

* * *

> The Commission's *1993 DSM Order* was reviewed and for the most part affirmed by the Commonwealth Court in *Pennsylvania Industrial Energy Coalition v. Public Utility Commission*, 653 A.2d. 1336, *aff'd per curium*, 670 A.2d. 1152 (1996) ('*PIEC*'). On the question whether Section 1319 permits the recovery of lost revenues in the context of a base rate proceeding, as the Commission in that case contended, the Court declined to reach the issue, finding it unripe because no utility had yet made a regulatory asset claim in the context of a base rate proceeding pursuant to the *1993 DSM Order*. *PIEC* at 1352-53.

UGI Electric Exceptions, at 3-4 (footnote omitted).

Specifically, the Commonwealth Court held:

> While we do not address whether recovery of lost revenues is authorized as DSM costs 'associated with the development, management, financing and operation of the program' under Section 1319 because it was not an issue raised by the Industrial Coalition, we agree with the PUC that whether the manner of recovery violates the Code is not yet ripe for determination.
>
> * * *
>
> We also cannot determine whether or not the award of lost revenues will result in unjust and unreasonable rates by ignoring increases in revenues from other sources, as argued by the OCA.

PIEC, at 1352.

Section 1319(a) states as follows:

> (a) Recovery of certain additional expenses.-- If:
>
> (1) a natural gas or electric public utility elects to establish a conservation or load management program and that program is approved by the commission after a determination by the commission that the program is prudent and cost-effective; or
>
> (2) the commission orders a natural gas or electric public utility to establish a conservation or load management program that the commission determines to be prudent and cost-effective:

> the commission shall allow the public utility to recover all prudent and reasonable costs associated with the development, management, financing and operation of the program, provided that such prudent and reasonable costs shall be recovered only in accordance with appropriate accounting principles. Nothing in this section shall permit the recovery of costs in a manner prohibited by section 1315 (relating to limitation on consideration of certain costs for electric utilities). Nothing in this section shall permit the recovery of the cost of producing, generating, transmitting, distributing or furnishing electricity or natural gas.

Section 1319 authorizes EDCs to establish conservation or load management programs, either voluntarily or upon order of the Commission. Before implementation, the Commission must determine that the program is "prudent and cost-effective." If the Commission makes such a determination, the Commission is to allow recovery of "prudent and reasonable costs." However, an EDC may not recover Construction Work in Progress or costs of producing, generating, transmitting, distributing, or furnishing electricity or gas.

UGI Electric's argument that Section 1319 provides authority for its CD Rider or its regulatory asset alternative must fail. UGI Electric chose to focus on the language of Section 1319 that addresses the "recovery of 'all prudent and reasonable costs associated with the development, management, financing and operation' of a 'conservation or load management program.'" UGI Electric Exceptions, at 3. In spite of the Company's argument that Section 1319 authorizes revenue decoupling, UGI Electric was forced to conclude:

> On the question whether Section 1319 permits the recovery of lost revenues in the context of a base rate proceeding, as the Commission in that case contended, the Court declined to reach the issue, finding it unripe because no utility had yet made a regulatory asset claim in the context of a base rate proceeding pursuant to the *1993 DSM Order*. *PIEC* at 1352-53.

UGI Electric Exceptions, at 4.

In other words, the Commonwealth Court did not reach the lost revenue recovery mechanism adopted by the Commission the *1993 DSM Order*. Therefore, UGI Electric can not assert that its lost revenue recovery mechanisms are proper since *PIEC* provides no support for UGI Electric's broad interpretation of Section 1319.

In *PIEC*, the Commonwealth Court determined that the recovery of demand side management ("DSM") costs under Section 1307(a) was lawful because: (1) the language of Section 1307 gives the Commission discretion to establish automatic adjustment clauses for the recovery of prudently incurred costs; and (2) the legislature specifically identified and provided for the recovery of prudent and reasonable costs for developing DSM programs. The Court reasoned, as follows:

> Because Section 1319 directs the PUC to allow recovery of all prudent and reasonable costs for developing, managing, financing and operating DSM programs and because Section 1307 gives the PUC the discretion to establish by either regulation or order the manner in which automatic adjustment recovery may be instituted and when such automatic adjustment of rates should be mandated, the surcharge method is permitted. This court is not free to substitute its discretion for the discretion properly exercised by the PUC in establishing the surcharge method.

PIEC, at 1349.

At most, *PIEC* authorizes the recovery of EE&C Plan costs through a Section 1307-type surcharge. However, the dispute here is over the recovery of lost distribution revenue margins, not over the recovery of actual EE&C Plan costs. Nothing in *PIEC*, Section 1319, or Section 1307 explicitly or implicitly authorizes the recovery of lost distribution revenue margins.

Furthermore, the Company failed to address the language in Section 1319 that explicitly provides that a conservation program implemented under Section 1319 is not permitted to provide for the recovery of the cost of distributing electricity. ("Nothing in this section shall

permit the recovery of the cost of producing, generating, transmitting, ***distributing*** or furnishing electricity or natural gas." [emphasis added]) The purpose of UGI Electric's revenue decoupling proposal is to permit the Company to recover the same margins on its distribution service as it would recover if there were no EE&C Plan. Margins are part of the cost of distribution service. Because the CD Rider (and the regulatory asset alternative) would recover distribution costs, it is more reasonable to interpret Section 1319 as disallowing revenue decoupling than as allowing it.

3. The ARRA

UGI Electric also observed that "[t]he lost revenue issue has arisen again in the context of the Commission's ongoing 'ARRA' [*American Recovery and Reinvestment Act of 2009 Investigation*, Docket No. I-2009-2099881] investigation." UGI Electric Exceptions, at 5. UGI Electric continued as follows:

> The ARRA Final Report confirms that, on the issue of lost revenue recovery, 'no legal precedent exists that would preclude the Commission from reviewing/approving an RDM [revenue decoupling mechanism] or similar rate making change [*e.g.*, a lost revenue recovery mechanism' for gas utilities under 66 Pa.C.S. § 1307(a)].

Id. (citation omitted). The Company concluded as follows:

> The same legal conclusion applies to UGI Electric, because, given that Section 2806.1 does not apply to EDCs with fewer than 100,000 customers, UGI Electric is in the same legal position as an NGDC [natural gas distribution company] for purposes of lost revenue recovery.

Id.

UGI Electric is correct that the issue has arisen in the ARRA investigation. However, the Company omitted two crucial facts. First, the OSBA and other ratepayer advocates have opposed revenue decoupling in the ARRA investigation. Second, the Commission has not yet entered an Order adjudicating that dispute (although the OSBA understands that an Order is

forthcoming). Therefore, the fact that the issue has arisen in the ARRA investigation is not authority for allowing revenue decoupling in this case.

In any event, Section 410(a) of the ARRA does not require the Commonwealth to allow decoupling as a condition for receiving stimulus funds. Furthermore, to this point, Congress has not mandated revenue decoupling in any other energy-related enactments. In addition, the General Assembly has expressly prohibited revenue decoupling for larger EDCs and has not provided explicit statutory authority for NGDC or small EDC revenue decoupling. Thus, UGI Electric is correct: it is in the "same legal position as an NGDC." UGI Electric Exceptions, at 5. Without authority under state law, the Commission may not implement revenue decoupling for EDCs or NGDCs.

Furthermore, because an EDC may reflect anticipated sales declines in the future test years in upcoming distribution rate cases, the only "loss" to the utility (due to the absence of revenue decoupling) would arise from the lag between the point at which conservation measures begin to impact sales and the implementation of new distribution rates. In light of an EDC's ability to file distribution rate cases whenever it deems necessary, there is no reason to search for ways to implement revenue decoupling through the back door, *e.g.*, through a strained reading of the ARRA.

4. Single Issue Ratemaking

UGI Electric also advanced an argument that the implementation of either of the Company's proposed revenue recovery mechanisms is not "single issue ratemaking." UGI Exceptions, at 10. The Company concluded that "[t]he courts have held that, as a general matter, it is inappropriate to adjust rates to reflect a change in a single revenue or expense item, absent special circumstances." *Id.*, at 11. The Company continued by observing that "[w]here, as here,

a utility can demonstrate a credible basis for recovering ***an extraordinary item*** between rate cases, the Commission has approved such recovery and the courts have affirmed it." *Id.* (emphasis added). UGI Electric then cited a Pennsylvania American Water Company case that involved expenses related to the September 11 attacks as an example of "extraordinary costs." *Id.*

The OSBA respectfully submits that the loss of distribution revenues is not an "extraordinary item," particularly when that loss is incurred by a filing voluntarily submitted by the Company. The conservation program proposed by the Company is, in fact, much more "ordinary" than "extraordinary." Mr. Knecht provided insight on this issue, as follows:

> In addition to this apparent legislative proscription [under Act 129], other basic ratemaking principles also argue against the adoption of the CDR. Under current rate design principles in Pennsylvania, load changes related to conservation, weather, or economic fluctuations are not subject to automatic adjustment mechanisms. ***Adopting such a mechanism that applies to only one type of conservation program (but excludes all other conservation programs, including those undertaken by customers themselves) is inconsistent and represents single-issue ratemaking.*** For example, any load growth experienced by UGI Electric related to new customers, or to existing customers, is not subject to a similar reconciliation mechanism.

OSBA Statement No. 1, at 10 (emphasis added) (footnote omitted).

Simply put, the recovery of the Company's potentially lost distribution revenue does not rise to the level of an "extraordinary item" which deserves special treatment from the Commission. As Mr. Knecht correctly stated, any lost distribution revenues that are a result of the Company's EE&C Plan are simply one of many factors that affect the economic health and viability of the Company. To single out that one expense for "extraordinary" treatment is not reasonable. The Commission should uphold the ALJ on this issue.

C. The Policy Basis for the Denial of Decoupling

1. Fuel Switching

UGI Electric complained that

> The public advocates' often-stated but never-supported concern that lost revenue recovery is unnecessary because UGI Electric revenue losses will be 'offset by revenue increases for other UGI affiliates' as the result of fuel switching, R.D. at 31, has no basis at all in the record.

UGI Electric Exceptions, at 16.

To be clear, the OSBA does not oppose the Company's proposed fuel switching program *per se*. However, it is the combination of the Company's proposed CD Rider (or the regulatory asset alternative) with the Company's fuel switching proposal that causes the OSBA concern. OSBA witness Mr. Knecht explained the problem, as follows:

> UGI Electric's EE&C Plan contains certain programs which involve fuel switching, including conversion from electric to gas appliances. Such conversions may indeed be consistent with the TRC Test requirements, and may indeed result in net reductions in energy consumption. As such, I do not believe that such programs should be necessarily excluded from an overall EE&C plan.
>
> However, in the case of UGI Electric, any reduction in electric load as a result of conversion to natural gas will involve an increase in natural gas load. An increase in natural gas load will result in an increase in distribution revenues to UGI Electric's affiliate, UGI Penn Natural Gas ('PNG'). In effect, a single-issue ratemaking device would be in place to protect UGI Electric from margin losses associated with its EE&C Plan, but there would be no comparable single-issue ratemaking mechanism in effect to recognize the gain in revenues achieved by the Company's PNG affiliate from that same Plan. Such a result would be unreasonable and inequitable.

OSBA Statement No. 1, at 10-11.

As Mr. Knecht explained, UGI Electric's fuel switching program would increase the revenues of an affiliated interest, PNG, and decrease the revenues of UGI Electric. Ratepayers

would then be required to make UGI Electric whole through the CD Rider or the regulatory asset alternative. Rather than a conservation measure, fuel switching would become a profit-maker for the totality of UGI Electric and its affiliates. Contrary to the assertions of the Company, such profiteering under the guise of a conservation program would, in fact, be "a principled basis for denying lost revenue recovery." UGI Electric Exceptions, at 17.

The OSBA opposes any form of revenue decoupling. If revenue decoupling (through the CD Rider or the deferred regulatory asset alternative) is eliminated from the Company's proposed EE&C Plan, the OSBA does not object to the inclusion of the UGI Electric's fuel switching proposal.

2. The Threat of an Accelerated Base Rate Filing

UGI Electric asserts:

> Surely, however, there can be no doubt that, all things equal, if UGI Electric were to implement its Plan without lost revenue recovery, doing so will significantly accelerate its need to file a base rate proceeding.

UGI Electric Exceptions, at 18.

In fact, the record has overwhelmingly demonstrated that if the Company is not permitted lost distribution revenue recovery, the next base rate case is not imminent.

Nevertheless, UGI Electric threatens that "[a]s [Company witness] Mr. [William J.] McAllister explained, UGI Electric customers will lose either way [*i.e.*, if UGI Electric withdraws its EE&C Plan or if the Company accelerates the filing of a rate case]." The Company continued:

> [T]hey will either lose the benefits of our proposed EE&C plan or they will end up paying a higher rate sooner than they otherwise would have paid them because UGI Electric will be recovering in the new base rates the projected lost revenues, plus all of the other increases in base rate components it is entitled to recover, plus the

> cost of adjudicating the lost revenue claim and all of the other issues in a base rate case filed earlier than otherwise would have been necessary.

UGI Electric Exceptions, at 18.

Mr. McAllister testified that the Company's current return on equity ("ROE") is 11.55%. UGI Electric Statement No. 3RJ, at 3. Under Mr. McAllister's *own* calculations, at the end of the Company's three-year EE&C Plan, a loss of distribution revenue caused by the Plan would reduce UGI Electric's ROE to 10%. *Id.* However, as Mr. McAllister admitted during cross-examination, if the Company's ROE did drop to 10%, that decline in ROE would *not* be sufficient to trigger a base rate case filing:

> Q: What level of return on equity would trigger, and presumably a lower level of return of cost of common equity, would trigger the filing of a UGI base rate case, if you have the expertise to respond to that question? And the authority and the ability.
>
> A: As far as I know, we won't have any set predetermined rate. But if the return on equity on a ratemaking basis would drop in the neighborhood of drop two, roughly around nine and a half percent, all else being equal.
>
> That would send a strong signal for us to begin really considering moving forward with, analyzing all the details and setting up the historic test year future test year, etcetera, to see what indeed the return on equity barometer would be when one factors in all the detailed ratemaking adjustments for rate base revenue expenses.
>
> So once, in my opinion, you get to that nine and a half percent ROE level, that would send a strong signal to start seriously considering the base rate case process.

Transcript, page 109, line 12 to page 110, line 5.

Regardless of the Company's threat contained in its Exceptions, Mr. McAllister himself stated under oath that a 9.5% ROE would only cause the Company "to start seriously considering the base rate process." *Id.* However, under Mr. McAllister's worst case scenario, as set forth in

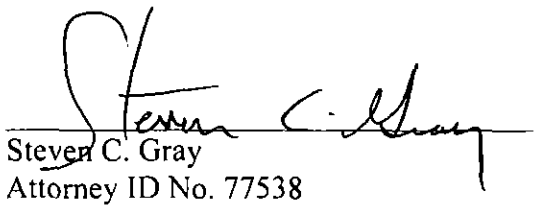
his own written testimony, UGI Electric's ROE would drop to only 10% if revenue decoupling is disallowed. Furthermore, *considering* a base rate case is quite different from actually *filing* one.

Consequently, there is no basis for accepting 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.

IV. CONCLUSION

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny UGI Electric Exception No. 1.

Respectfully submitted,



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BEFORE THE
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Energy Efficiency and Conservation Plan : Docket No. M-2010-2210316

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Exception, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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