BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-2021-3023618
UGI Utilities, Inc. Electric Division	:	

EXCEPTIONS
OF
BRANDI BRACE

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Table of Contents

I. INTRODUCTION

Though I am one of the complainants in R-2021-3023618, I was not part of the group that came to the settlement being recommended by Judge Haas.

With a background outside of law, my critique of the proposed decision is based on what I see as logical failings of the recommendation and the process itself as well as the lack of response to any of my objections throughout the process. I wish to make my objections known so that if any member of the PUC would agree with me, they can use their expertise to make the deal fair and equitable.

I will raise issues with multiple sections of the proposed decision:

1.) The reasons for a rate change should be clear to the public; I do not believe that a "black box" settlement is ever in the public's best interest as it leaves no trace of the established reasons for compromise or lack thereof, essentially negating the burden of proof that is supposed to be on the electric company.
2.) The term "public interest" should remain fluid but, when used, needs to be defined by the party using it; rate increases should be justified on these terms.
3.) A justification of "reasonableness of rates" needs to be held to a higher standard of examination, primarily that public utilities are compared, not to other utilities alone, but to the region in which they serve.
4.) I believe that UGI's application of the rate increase to non-generative fees stands in direct defiance of Chapter 28 of Title 66 of the PPA Utility Code.
5.) Recouping COVID-19 related expenses from customers while showing profit and continuing to pay the executives millions more than comparative electric coops is unethical.
6.) UGI should be allowed to participate in the PJM Frequency Regulatory Market, but (since customers are paying for the storage) the proceeds should go directly to offsetting uncollectable accounts to reduce the burden on customers.

II. EXCEPTIONS

Exception Number 1: The reasons for a rate change should be clear to the public; I do not believe that a "black box" settlement is ever in the public's best interest as it leaves no trace of the established reasons for compromise or lack thereof, essentially negating the burden of proof that is supposed to be on the utility.

In the recommended decision by Judge Haas, he explains that, "The settlement includes agreement as to the $6.15 million increase in annual distribution operating revenues on a 'black box' basis, meaning that the parties do not specifically identify or resolve individual rate base, revenue, expenses, and rate of return issues" (p. 2). He continues on page 8 saying that a black box settlement is "where the settlement provides for an increase in the utility's revenues but does not indicate how the parties calculated the increase." The justification for the use of this type of settlement is that "the Commission has permitted 'black box' settlements as a means of

promoting settlements in contentious base rate proceedings" and "settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources" (p. 8). Neither of these reasons has anything to do with an increase in public interest or thorough examination of data presented. It's an economic decision to hasten proceedings.

I have three issues with this:

1. As a complainant, I was not involved in the proceedings that led to this settlement, and I cannot know the reasons for the end result. The justification matters.

2. As a member of the public, I have no understanding of the reasons for the concessions or the reasons for not having a specific concession. In fact, the black box settlement is the culmination of an entire process that is made so complicated that the public won't understand and will therefore be unable to argue against the injustice.

3. As a concerned citizen, a black box proceeding leaves the PUC in the dark as to any of the dealings that took place and requires the board to trust in a system that requires, by definition of a black box settlement, no oversight.

As mentioned above, I believe this type of deal is connected to a wider problem in this process of what I'm going to term factual gish gallop. While gish galloping as a rhetorical technique often relies on poorly supported evidence, I don't believe that's the case here. While all the evidence presented is factual, I don't believe that it is all strictly relevant, and I also don't believe that the reason for the extreme amount of information is to provide people with the data to make a judgement call. Like in traditional gish galloping, UGI seems to take the approach that if they drown the counter arguments in piles of spreadsheets, then those opposing them will not be able to respond to every point.

This is not the only way that I believe UGI's efforts leave the public confused and the agencies defending the public overwhelmed. Later in the proceedings, many documents that UGI released to the parties were locked behind the label – CONFIDENTIAL (SIC). Each person needed to be granted access to the SharePoint folder and then be given access to what was CONFIDENTIAL (something I never requested).

The issue of confidential documents is presented as one in which the company will be harmed if the information they share is released; it conveniently ignores that due to the monopoly on power lines, no electric company could (in my understanding and beyond buying UGI outright) compete for UGI's market, even if they were handed a detailed explanation of every action the company wishes to take. A petition for protective order is only justifiable:

> "when a party demonstrates that the potential harm to the party of [SIC] providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process" (52 Pa. Code § 5.365).

As this justification is not made to the public, I question how much harm any of the information would have caused UGI. I believe the ability to label so much information confidential saved UGI from having to justify themselves in a way that made their needs/intentions clear. Confusion of the process only aids them in "making their case."

Judge Haas summarizes the situation of reliance on others well,

> "Each of the Joint Petitioners used financial and economic experts to assist in reviewing and analyzing the many claims made by the Company in its rate proposals. It was only after this review and analysis by the various experts that the agreed upon settlement numbers were established. Accordingly, although the many individual revenue and expense items may not be revealed and determined in the Joint Petition, these items were nonetheless considered by the parties in arriving at their respective settlement positions and, ultimately, in the agreed upon settlement provisions." (Recommended Decision, p. 48).

While expert opinions are helpful and necessary, I don't think that experts consulted by these parties are looking at the deeper questions of "why"; I think they are looking at past precedent. And in times of extreme need or disparity, the "why" needs to be examined to assure that the context is such to rely on past precedent. I don't believe that the experts had a vested interest in making an argument that would be in the public interest; they were a tool of the various parties to make the process more expeditious. There needs to be specific oversight that determines if the public is gaining anything of value.

The black box settlement cements the entire process as one in which the parties make a hidden deal which looks to me as though UGI sees dramatic benefit without establishing great need. The other parties may be complicit, I assume, due to a history of dealing with these cases and the exhaustive effort that needs to be put in to combat the sheer amount of content. The amount of time and dedication necessary encourages a lack of vested interest. The issue with this is seen in such occurrences as the OCA having two representatives withdraw throughout the case (Luis M. Melendez and Phillip D. Demanchik). Without continuity how can there be deep understanding?

The settlement may be the best the parties assume they can get rather than the deal being one in which they may truly believe. Indeed, Judge Haas' recommended decision includes statements like "all parties agree that the agreed-upon increase falls within the range of likely outcomes that would result from a fully litigated proceeding" (p. 20-21). This shows that the decision is not based on assuring public interest but upon guessing what the alternative benefits would be if more effort and time and money would be used examining the case further. Settling for as good as one can get is not the same as pushing for fairness.

Exception Number 2: The term "public interest" should remain fluid but, when used, needs to be defined by the party using it; rate increases should be justified on these terms.

The discussion of likely outcomes leads to my second point of contention, a definition of public interest. The public interest is the business of the PUC. It's a lofty responsibility that hinges on being able to balance what is fair for a public utility company and the general public. Yet, there is no definition that I found in the PA Code as to what "public interest" is.

This ambiguity is a strength of the code because, as changes occur more quickly than laws, it allows those who interpret the laws to make the judgement that will best help the "public." Here I am defining "public" as anyone not directly connected to UGI.

There is, however, a weakness in this definition as well: without open discussion as to the actual public good being accomplished by the proposal, a smokescreen arises in which there are no well-defined demands of the person asserting that the "public interest" is served. Without the PUC directly asking how the public benefits, there is no established public interest. Title 66 § 508 of the PA Code holds that:

> "The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with *the public interest and the general well-being of this Commonwealth*" (italics added by Brandi Brace).

To uphold the weight of this power and make the balance of public utility and public good equitable, the question must be asked: is there a need for the rate of increase that can justify the increased rates that customers (excluding industrial customers in this case) will be paying?

Despite the need to answer this question, the procedures in place do not require that the central issue of public good be justified clearly or that it be defined at all. All that the black box settlement shows is that some of the parties involved agreed that the public interest was served. Judge Haas states that part of how the deal serves the public interest is by gradually increasing rates rather than immediately reaching UGI's original demand (p. 22). He explains that the company is moving the residential customers "toward the true cost of service" (p. 22). That will be discussed further in the next exception. But while it may be the better of two options, believing there are only two options is a false dichotomy.

Exception Number 3: A justification of "reasonableness of rates" needs to be held to a higher standard of examination, primarily that public utilities are compared, not to other utilities alone, but to the region in which they serve.

The reasonableness of rates is dependent on an understanding of the true cost of service. The issue here is that "true cost" is literally defined by the company requesting the rate regardless of how they chose to spend their money. I noted in my direct testimony that the CEO made $7,504,202 (Brace Direct Testimony , p.8, ln 20-21). This is not necessary spending as can be seen when looking at the list of examined Pennsylvania electric coops in Exhibit B (p. 28-31)

of my Direct Testimony. There, the highest paid CEO was given a total compensation of $467,586 (Brace Direct Testimony, p. 9, ln 7-9).

To put it simply, if I had an apple tree, and I paid someone one million dollars to pick the five-hundred apples off of it, that doesn't mean my apples are worth $2,000 a piece. It means I need to change how I spend money.

Judge Haas explains on page 7 of the recommended decision that "the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility." However, I believe that UGI and all utility companies rely on a history of arguments that is not communicable to the people they are serving. Their justifications are so obscure as to be argued about in academic journals. That's all edifying and important work. But what that work doesn't do is actually justify that a utility company needs an increase in rates.

There are questions that need to be answered for the current rate: Can the utility provide reliable electricity to their customers? Can the utility pay upkeep costs? Can the utility pay to have a full contingency of staff obtaining good wages? Can the utility maintain effective leadership? If those are all yes, then why do they need more money?

On page 6 of the recommended decision, Judge Haas explains that,

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public *equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties*; but it *has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures*.
> (italics added by Brandi Brace).

UGI has already achieved this with current rates. This is seen in page 6 (lns 12-14) of my direct testimony which refers to the fact that "UGI's share value increased from $2.16 to $2.98 from 2019 to 2020. That accounts for a 37.96% increase." In my opinion, that, in addition to the executive pay, is proof that money isn't an issue for UGI, though how they spend it might be.

If all public utilities are experiencing more growth than this in a period of history when people and small businesses everywhere are struggling with the effects of COVID-19, then the system for determining "reasonableness of rates" needs to be re-examined. Judge Haas continued saying:

> "The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. *A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally*" (Recommended Decision, p.6).

I do not believe that there should be so much focus on the economic situation for the utility with no mention of the people they are serving. In the above quote, I like the focus being "to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." And as a public utility they are serving the customers, albeit in a much less than ideal fashion. I would like to highlight a press release from November 18, 2020 as discussed in my direct testimony in which UGI discusses: "Strong fourth quarter performance… driven by better than anticipated business results, a slightly lower than anticipated COVID-19 impact, and higher than expected tax benefits" (Brace Direct Testimony p. 11). I feel like that alone shows the current rates are "reasonably sufficient."

UGI is proclaiming their own successes while demanding money from the customers who are already suffering. My direct testimony highlighted the fact that "the median household income of Luzerne county was $53,473, and the per capita income was $28,972. 15.2% of people live in poverty" (Brace Direct Testimony, p. 8, ln 1-3). Right now, a household making $53,473 cannot afford this increase. Right now, people are already choosing between food, medicine, and heat. Electricity is not a luxury.

By justifying the rate hikes on prior decisions and precedents, it seems that UGI and other parties involved are ignoring the economic and social context of those decisions. While companies all want continued growth, that is not what is guaranteed by the Pennsylvania Utility Code. Rather, the 2008 Preamble of ACT 129[1] states the following as its first objective:

> "The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment."

Instead of comparing a utility company to other utility companies, the PUC needs to compare the fairness they show to the utility company with the fairness the utility shows its customers. The cutoff of X% over poverty line for Operation Share or of X% for CAP and LIURP does not modify based on stepped income. That means that one person making $1 over the limit is not eligible for the program. Furthermore, while UGI can submit multiple books of explanation for why they need more money, eligibility in the assistance programs looks at one factor – income.

When the salary and bonuses of five executives in 2019 is even closely comparable to the money being requested in the rate hike, there is something fundamentally wrong about what is considered important in utility oversight. I do not understand, and I doubt the public at large understands how a just rate of return is not already evident when this type of money is being spent in such a cavalier way, and when stockholders are still seeing returns on their investments. It is my belief that UGI needs to spend the money they already have more wisely.

[1]https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?txtType=HTM&yr=2008&sessInd=0&act=0129.&chpt=000.&subchpt=000.&sctn=000.&subsctn=000

Exception Number 4: I believe that UGI's application of the rate increase to non-generative fees stands in direct defiance of Chapter 28 of Title 66 of the PA Utility Code.

As I pointed out in my Direct Testimony (p. 18-19 ln 24-4), the move away from direct regulation to market-based competition was justified on the basis that it would be "more effective." Despite my disagreement with this premise, I also believe that UGI's proposed rate hike and the proposed settlement are both attempting to flagrantly disobey the spirit of the code. By applying the rate increase to the charges that are inescapable by the customer, mainly the customer charge and distribution charge, they skirt competition. The only choice a customer has is in who they pay the generation fee to. Regardless of the company providing me with electricity, I am required to pay distribution charges to UGI. There is no market-based competition. There is, therefore, no limit to UGI's ability to demand money from the customers who cannot live without the services they provide.

This inherent unfairness in spite of a law promoting competition has not, to my knowledge, been discussed throughout the rate case. In fact, rather than suggesting that the increase go towards the generation charge, Judge Haas focuses only on the issues that arise from raising the customer charge and states in the recommended decision that: "reducing the amount of the increase allocated to the fixed monthly customer charge will ensure that customers have greater control over lowering their monthly bills through conservation and usage reduction efforts" (p. 22). While true that the customers will have the control to not use power, applying the increase to the generation fee would have the same effect while requiring UGI to remain competitive. Transmission fees should only be for the cost of maintaining the lines. By raising the rates there, I believe UGI is telling customers to either suffer the ever-increasing rate hikes or use no power.

Exception Number 5: Recouping COVID-19 related expenses from customers while showing profit and continuing to pay the executives millions more than comparative electric coops is unethical.

From the way that Judge Haas explains in the recommended decision, it was the Pennsylvania Utility Commission's intention that UGI recoup COVID-19 costs. He cites UGI's Statement in Support saying that "the Secretarial Letter directed utilities to claim deferred COVID-19 costs, at the first available opportunity" (35). If that's the case, this should not be paid for through a generic tax hike, but something that highlights the transient nature of the cost. By absorbing it into a transmission rate, I doubt the public will ever see the increase disappear. It is more likely that the original purpose will be lost in UGI's unrestrained growth.

Exception Number 6: UGI should be allowed to participate in the PJM Frequency Regulatory Market, but (since customers are paying for the storage) the proceeds should go directly to offsetting uncollectable accounts to reduce the burden on customers.

Finally, quite apart from everything prior, the recommended decision notes that the parties agreed in the settlement that UGI was using the battery as a generation resource rather

than being used for distribution (p. 23-24). This is true, and I am glad it was pointed out by multiple people. However, how does it help for customers to still pay for the battery and then not have UGI use it to make money? Why wouldn't it instead be proposed that UGI document how much money is made off of the PJM market and have that money be used to defray the cost of electricity for those who are struggling to pay their bills. As discussed in Exception 5, UGI needs to recoup costs for unpaid bills and the PJM market allows them to make money from someone other than their customers. It seems like a good start to a solution. By restricting UGI from joining the PJM market, it is not saving anyone money. It is a wasted opportunity for growth that isn't at the expense of customers, and it could – if monitored by the PUC – take the burden off those who are struggling under UGI.

III. Conclusion

In conclusion, the time of looking at other successful utilities as justification for a rate hike on struggling customers needs to be over. By granting these rate hikes, cyclical growth takes hold as one utility points to another for justification of need. The public interest must be upheld and that can not be done through a process like has been the case so far in which, I believe, every trick possible has been used to keep information incomprehensible or completely unobtainable.

Black Box settlements need to be banned, and the cost of litigation should be covered without exception by the utility requesting the rate increase.

Public interest needs to be defined by each person who uses it to justify their actions, and it should be the primary measure of whether or not a rate increase is justified.

Determining whether a rate is reasonable should no longer be determined by what the utility wants to make but what the region in which the utility operates can afford, and furthermore, contextual events like COVID-19 need to be taken into account. The fact that customers are recouping a utility for COVID-19 related costs while the same company demonstrates (as stated on page 6 above) "Strong fourth quarter performance… driven by better than anticipated business results, a slightly lower than anticipated COVID-19 impact, and higher than expected tax benefits," is absurd.

And finally, keeping UGI out of a market that could subsidize the costs associated with unpaid bills and struggling customers, is not helping anyone.

Beyond the arguments of what is currently done and what is currently acceptable is the question of "what is the public interest and is the PUC upholding that?" This might be a black box settlement, but in the parent company's (UGI Corporation) 2020 Annual Report[2] to shareholders, the first line paints a picture of why I believe they might want to obscure their financial information. It begins with: "Fiscal 2020 was another strong year for UGI." Can the customers of UGI say the same? If not, the power balance is not fair or equitable.

[2] https://www.ugicorp.com/static-files/a6abab34-7a81-4d82-868a-817ad487d284