



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

IN REPLY PLEASE  
REFER TO OUR FILE

July 25, 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  
**Exception** in the above-captioned proceeding.

Copies of this Exception are being served on all active parties of record.

Sincerely,

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

Enclosure  
CDS/edc

cc: Parties of Record  
Hon. Susan D. Colwell  
Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner, Commissioner  
James H. Cawley, Commissioner  
Pamela A. Witmer, Commissioner  
Chief Counsel Pankiw, Law Bureau  
Director Cheryl Walker Davis, OSA

SECRETARY'S BUREAU  
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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 :

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**EXCEPTION  
OF THE  
OFFICE OF TRIAL STAFF**

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Charles Daniel Shields  
Senior Prosecutor  
PA Attorney I.D. No. 29363

Johnnie E. Simms  
Chief Prosecutor  
PA Attorney I.D. No. 33911

Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: July 25, 2011

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## **I. INTRODUCTION**

The Office of Trial Staff (“OTS”) respectfully submits this instant Exception to the July 15, 2011, Recommended Decision of Administrative Law Judge Susan D. Colwell (“ALJ Colwell”). This fully litigated proceeding was initiated on November 9, 2010, when UGI Utilities, Inc. - Electric Division (“UGI-Electric” or “Company”) voluntarily elected to file a Petition with the Pennsylvania Public Utility Commission (“Commission”) seeking approval of a proposed Energy Efficiency and Conservation Plan (“EE&C Plan” or “plan”).

As referenced therein, a Commission Secretarial Letter dated December 23, 2009, sent to the Company [and three other jurisdictional electric distribution companies (“EDCs”) also with fewer than 100,000 customers] provided that the filing of such an EE&C Plan was left to the discretion of the qualifying EDC given that the Act 129 provisions did not mandate the filing of a plan for EDCs with less than 100,000 customers.<sup>1</sup>

OTS filed an Answer to the UGI-Electric Petition on November 29, 2010, and provided a preliminary identification of a number of issues that OTS contended needed to be addressed and resolved in the proceeding.

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<sup>1</sup> The referenced Act 129 was signed into law by the Governor on October 15, 2008, and imposed new requirements on the larger EDCs with the stated goal of reducing energy consumption and demand. Under the Act, each EDC with 100,000 or more customers must reduce consumption by 1% by May 31, 2011, and by 3% by May 31, 2013. In addition to the reduced consumption, the involved EDCs must each reduce their annual system peak demand by a minimum of 4.5% in the 100 hours of highest demand by May 31, 2013.

The previously distributed OTS written testimony and an exhibit were offered and admitted into the record during the evidentiary hearing conducted by ALJ Colwell on May 4, 2011.<sup>2</sup> Said testimonies presented the OTS position recommending denial of UGI-Electric's Petition and also provided proposed modifications to the plan *in the event* that the Commission's deliberations included consideration of authorizing an EE&C Plan for this Company with the inclusion of all modifications deemed necessary and appropriate.

On June 2, 2011, OTS filed its Initial Brief setting forth the argument, evidence and law supporting its recommendations to the Commission that the instant Petition be denied, or in the alternative if any plan were to be considered, that it be modified as recommended by OTS. On June 14, 2011, OTS filed its Response Brief in this matter.

In the Recommended Decision, the ALJ provided a thorough history of the proceeding, accurately characterized the positions of the parties regarding each contested issue, and provided definitive recommendations for the disposition of each such issue.

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<sup>2</sup> The three separately distributed OTS testimonies, Direct, Rebuttal and Surrebuttal and an OTS Exhibit admitted into the record at that hearing were produced and sponsored by OTS Witness Scott Granger. His Direct Testimony was offered and admitted into the record as OTS Statement No. 1 and his accompanying separately bound Exhibit was admitted as OTS Exhibit No. 1 (consisting of Schedules 1-4). Mr. Granger's Rebuttal Testimony was admitted as OTS Statement No. 1-R and his Surrebuttal Testimony was admitted as OTS Statement No.1-SR.

OTS provides this sole Exception to the ALJ's recommendation in the Recommended Decision relating to the total amount of plan expenditures that should be authorized by the Commission in its final Order resolving this proceeding.

## **II. EXCEPTION**

First, it should again be emphasized that the primary position of OTS throughout this proceeding has been and continues to be that the Company's Petition seeking Commission adoption of an EE&C Plan strictly under the Company's insisted upon terms and conditions should be denied. However, given that the ALJ has proposed adoption of the plan with her recommended modifications, OTS will respond here accordingly and has only one Exception to the Recommended Decision on that score.

Obviously, the ALJ's clear and unequivocal recommended rejection of UGI-Electric's misguided proposals seeking Commission approval to ensure a guaranteed revenue level for the Company as part of their plan, either through a surcharge or regulatory asset treatment, is consistent with the positions of OTS and the other statutory parties who were and continue to be adamantly opposed to such schemes and the sought after approval by the Commission. RD, pp. 18-31.

OTS would also note with agreement the ALJ's recommended modification to the Company's proposed fuel switching program that caps incentive levels, i.e. payments to customers, to ensure that "[N]o incentive financed by the other

ratepayers should exceed 50% of the cost of the replacement.”<sup>3</sup> RD, p. 39. Such a recommendation by the ALJ has the effect, consistent with the OTS position, to reduce the level of plan expenditures, although for a different reason than consideration of the smaller size of this EDC, as advocated by OTS. RD, pp. 37-39.

#### **OTS EXCEPTION NO. 1**

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

Recommended Decision, pp. 48-50

OTS Initial Brief, pp. 32-34

OTS Response Brief, pp. 27-28

In this proceeding, OTS recommends that the Commission modify the submitted EE&C Plan to limit total plan expenditures to 1.2% of UGI-Electric’s total annual revenue as of December 31, 2006.<sup>4</sup> OTS IB, pp. 32-34, OTS RB, pp. 27-28. The OTS position recommends that the Commission duly recognize that the Company has only approximately 60,000 customers and that a designated total

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3 OTS interprets this language to require that the Company must first receive the appropriate documentation from the customer as to the cost of the replacement and then can provide that individual customer with 50% reimbursement for that verified cost.

4 Note that the OTS recommendation also modifies the period of time for the revenue level component of the computation, using the twelve months ended in 2006, per the period used for Act 129 program revenues, rather than the twelve month period ended in 2008 used by UGI-Electric for its expenditures calculation. OTS IB, p. 34, fn. 28, citing OTS Stmt. No. 1, p. 23.

plan expenditure limit that would maintain costs at a lower percentage level than was allowed for the bigger electric distribution companies (“EDCs”) subject to the requirements of Act 129 would be reasonable and prudent.<sup>5</sup> OTS IB, p. 33. OTS RB, pp. 27-28.

OTS also emphasized in its Initial Brief that the Secretarial Letter addressing such potential filings by smaller EDCs states that while “the Commission will permit the recovery of all reasonable and prudent costs incurred in implementing and managing a voluntary EE&C plan, ... the EDC submitting the voluntary plan must justify the level of expenditures proposed whether they meet the Act 129 cost limits or not.” [Emphasis added in OTS Initial Brief] Secretarial Letter, page 2. OTS IB, p. 33. OTS again references another statement of the Commission in the Secretarial Letter that it, “recognizes the Act 129 programs contain a complexity and comprehensiveness that may not be appropriate for Small EDCs, due to the costs of such programs that must be supported by a smaller customer base.” [Emphasis Added Here] Secretarial Letter, p. 2. OTS IB, p. 33.

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<sup>5</sup> Act 129 allows EDCs having at least 100,000 customers to recover all prudent and reasonable costs relating to the implementation and management of its EE&C plan, but limits such costs to an amount not to exceed two percent (2%) of the EDC’s total annual revenue as of December 31, 2006. OTS IB, p. 32. Also, the Company’s Plan provides, at page 3, that, “cognizant of the guidelines in the Commission’s Secretarial Letter and the related requirements of Act 129, UGI Electric, and its consultant, Mr. Paul Raab, used an approximate 2% of annual revenues for the twelve month period ended May 31, 2008 as its expenditure guideline.” EE&C Plan, p. 3. OTS IB, p. 32.



These statements of the Commission clearly indicate that the statutorily required 2% of annual revenues cap on total plan expenditures need not necessarily be applicable to voluntary filings by smaller EDCs and that the level of total plan expenditures should be constructed to take into consideration the “smaller customer base” of the smaller EDC.

In the Recommended Decision, the ALJ addresses this issue of the appropriate level of total plan expenditures directly at pages 48 through 50 and properly concludes that “... the actual costs proposed by the Company are not two percent but 2.3%.” RD, p. 50. The ALJ then directs the Company to reduce the costs of its EE&C Plan to no higher than 2% of its revenues, a reduction of \$300,000 to the Company’s proposed level. RD, p. 50.

Interestingly, it was the Company itself that apparently considered that it was not legally bound to the limit of 2% of annual revenues for total plan expenditures mandated by Act 129. Such an interpretation works both ways. OTS similarly considers that the 2% figure is not sacrosanct here and that a different percentage cap should be utilized if it can be demonstrated to be appropriate. That is precisely what OTS has demonstrated in this proceeding. Specifically, that the smaller size of UGI-Electric justifies the use of a lower percentage limit *due to the costs of such programs that must be supported by a smaller customer base.*

In further support of Commission adoption of this OTS Exception, we note that the OTS Response Brief pointed out that the OTS recommendation that the

Commission direct the Company to scale back the level of total plan expenditures to 1.2% of annual revenues<sup>6</sup> is the perfect remedy for the Company's claim 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 their smaller size since it would represent too large a decrease in their revenues.<sup>7</sup> OTS RB, p. 28.

Thus, while the ALJ's recommendation serves to reduce the Company's sought after level of total plan expenditures, OTS submits that a further reduction is necessary and appropriate to take into consideration the smaller number of customers who will eventually provide each and every dollar to fund the entire program. The OTS calculation to arrive at a total plan expenditure limit based upon the approximately 60,000 customers appropriately reduces the financial burden upon each of them and as such is fair, balanced and in the public interest.

For the foregoing reasons, and those identified in the OTS Initial and Response Briefs, OTS respectfully requests that the Commission adopt the instant OTS Exception and incorporate the result into the final Order concluding this

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6 Again, using the twelve months ended in 2006, rather than the twelve month period ended in 2008 as used by UGI-Electric for its calculation.

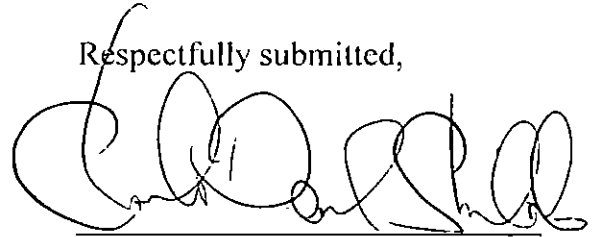
7 Based, of course, on the reasonable and likely assumption that there is a direct relationship between the level of expenditures for a conservation plan and the aggregate level of reduced electric usage.

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

### III. CONCLUSION

For the reasons set forth above and in the OTS Initial and Response Briefs, the Office of Trial Staff hereby respectfully requests that the Commission issue an Order concluding this proceeding that grants the instant OTS Exception submitted herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles Daniel Shields", written over a horizontal line.

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Dated: July 25, 2011

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Exception**, dated July 25, 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):

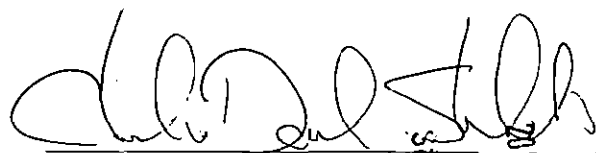
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