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July 20, 2009

VIA E-FILING

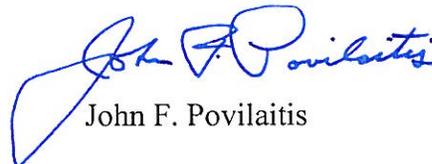
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street – 2nd Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

Re: Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan, Docket No. M-2009-2093218

Dear Secretary McNulty:

Attached is an e-file copy of the Answer of the West Penn Company, d/b/a Allegheny Power in Opposition to the Petition to Intervene of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc, and UGI Central Penn Gas, Inc. in the above-referenced proceeding. Copies are being served as indicated in the attached Certificate of Service.

Very truly yours,


John F. Povilaitis

JFP/ck
Enclosures

c. Certificate of Service
The Honorable Katrina L. Dunderdale

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :
d/b/a Allegheny Power for Approval :
of its Energy Efficiency and Conservation :
Plan, Approval of Recovery of its Costs : Docket No. M-2009-2093218
through a Reconcilable Adjustment Clause :
and Approval of Matters Relating to the :
Energy Efficiency and Conservation Plan :

**ANSWER OF THE WEST PENN POWER COMPANY D/B/A ALLEGHENY
POWER IN OPPOSITION TO THE PETITION TO INTERVENE OF UGI
UTILITIES, INC. – GAS DIVISION, UGI PENN NATURAL GAS, INC, AND UGI
CENTRAL PENN GAS, INC.**

West Penn Power Company d/b/a Allegheny Power, by and through its counsel, files this Answer in Opposition to the Petition of the above UGI gas distribution companies in the above-captioned proceeding. Allegheny Power opposes the intervention of the UGI distribution companies because they have not met the Pennsylvania Public Utility Commission's ("Commission") substantive standard for intervention.¹ In support of its Answer, Allegheny Power avers as follows:

I. Introduction

1. By petition dated July 10, 2009, UGI Utilities, Inc. – Gas Division ("UGI"), UGI Penn Natural Gas, Inc., ("PNG") and UGI Central Penn Gas, Inc. ("CPG") (collectively, "UGI Distribution Companies") seek intervention in this proceeding.²

¹ UGI Utilities, Inc. has taken the position in other Commission proceedings that a petition to intervene must be supported by a verification, even when the facts alleged in the petition are commonly known. *See Pa. Pub. Util. Comm'n v. UGI Utilities, Inc.*, Docket No. R-2009-2105911. No such verification was provided by UGI here. However, because this procedural defect is easily curable, Allegheny Power is not including it as grounds for opposing the intervention.

² According to the petition, all three UGI Distribution Companies provide service in Allegheny Power's service territory.

2. Section 5.72 of the Commission's regulations contains the standard for eligibility to intervene in a Commission proceeding. Under Section 5.72, eligibility to intervene is established only when the petitioner has a statutory right to intervene, when the petitioner has a direct interest in the matter that is not adequately represented by existing participants, or when the petitioner has another interest of such a nature that participation is in the public interest. 52 Pa. Code § 5.72(a)(1),(2), (3). Here, the UGI Distribution Companies are not eligible to intervene under any of these standards.

3. The UGI Distribution Companies do not claim or cite to a right to intervene conferred by statute. Therefore, the UGI Distribution Companies do not have any statutory right to intervene in this proceeding.

4. Rather, their alleged eligibility to intervene is based on a purported direct interest and purported public interest considerations. The UGI Distribution Companies describe their interest in this proceeding as follows:

Given the broad requirements and clear intent of Act 129 for the EDCs employment of energy efficiency and conservation measures such as "energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies," the UGI Distribution Companies – which advocate the inclusion of fuel substitution technologies in the EE&C plans – have interests that are of such a nature that their participation in this proceeding is in the public interest.³

In short, the UGI Distribution Companies' allege their interest in this proceeding is to advocate the inclusion of a natural gas fuel substitution program in Allegheny Power's initial EE&C Plan.

5. The UGI Distribution Companies continue that they should be permitted to intervene because: (a) Act 129 and the Commission's Implementation Orders clearly contemplate that fuel substitution programs are eligible to meet the Act 129 load

³ Petition to Intervene, ¶ 7.

reduction targets; (b) the use of natural gas resources as an electric usage reduction measure has the potential to significantly affect the costs of electricity that Allegheny Power customers pay; and (c) the UGI Distribution Companies can provide valuable input on the long-term sustainable benefits of fuel switching programs.

II. The UGI Distribution Companies' petition to intervene should be denied because petitioners have failed to meet the Commission's substantive standard for intervention.

6. Contrary to the assertions in the petition to intervene, the UGI Distribution Companies do not have a direct interest in this proceeding. Nor is their intervention sustainable based on considerations that are in the public interest. The Commission's June 1, 2009 order addressing certain Act 129 implementation issues supports that fuel switching, which is the UGI Distribution Companies' sole basis to intervene in this matter, should not be included in an Electric Distribution Company's ("EDC") initial Energy Efficiency and Conservation Plan ("EE&C Plan" or "Plan").

7. UGI previously argued to the Commission that it should tentatively approve fuel switching (the replacement of equipment that uses electricity with equipment that uses natural gas) as a measure that would be included in the Technical Reference Manual ("TRM").⁴ But, in its June 1, 2009 Order,⁵ the Commission rejected UGI's position and indicated that there is not enough time to address all the issues for inclusion of fuel switching in the TRM that that need to be addressed in order to provide sufficient guidance to EDCs in developing their EE&C Plans. Therefore, inclusion of

⁴ The TRM is employed, among other reasons, to estimate annual energy savings for a selection of energy efficient technologies and measures. In general, energy and demand savings are to be measured using measured and customer data as input values in algorithms. After consideration of comments, the Commission adopted a TRM for use in the initial EE&C Plans.

⁵ *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update*, Docket No. M-00051865 (Order entered June 1, 2009) ("June 1, 2009 Order").

fuel switching in an EDC's initial EE&C Plan is premature. The Commission's rejection of including fuel switching in the initial EDC Plans is evident with the express exclusion of fuel switching programs from the TRM, which is the means by which energy savings associated with "standard" energy efficiency and conservation measures are calculated under the Plans.

8. The June 1, 2009 Order also did not sustain PPL's suggestion that fuel switching be considered by using a "custom" calculation of savings performed outside the TRM. Without a TRM or the option for "custom" calculation, an EDC has no way of determining the energy savings related to a fuel switching program. With no provision to determine the justifiable energy savings, fuel switching is not an option for inclusion into Allegheny Power's initial Plan in order to meet the requirement that the initial Plans filed by the EDCs meets the energy savings targets of Act 129.

9. As noted by the Commission in its June 1, 2009 Order, inclusion of fuel switching in the TRM requires further consideration and deliberations prior to inclusion in any Plans:

The Commission recognizes that fuel switching is a complicated topic that will require additional time and effort to fully address. As the TRM will provide vital guidance to EDCs in developing their EE&C plans, which are due to be filed by July 1, 2009, there is not enough time to convene a working group to address all the related issues, fuel switching will not be included in this TRM. The Commission will convene a fuel switching working group in the near future to identify, research and address issues related fuel switching. Depending on the outcome of this working group, fuel switching may be incorporated into a future version of the TRM.⁶

By excluding fuel switching from the TRM and by not sustaining PPL's suggestion that fuel switching be considered by using a "custom" calculation of savings performed outside the TRM, the Commission recognizes the complexity and the many issues

⁶ June 1, 2009 Order at 9.

surrounding fuel switching and supports the position that fuel switching should not be included in Allegheny Power's initial Plan. Thus, contrary to the assertion of the UGI Distribution Companies in their petition to intervene, the Commission's Act 129 Implementation Orders do not contemplate that fuel substitution programs are eligible to meet the Act 129 energy savings targets in the initial Plans submitted by the EDCs.

10. Rather, the proper forum to address the issues raised by fuel switching prior to inclusion into any EE&C Plan is the fuel switching working group established by the June 1, 2009 Order. Simply put, as recognized by the Commission in its June 1, 2009 Order, it is not in the public interest for the fuel switching issue brought forward by UGI to be addressed in this proceeding at this time.

11. EE&C Plans will be reviewed annually and amended as needed. Of note, the Commission at page 23 of its January 16, 2009 Implementation Order (Docket No. M-2008-2069887) established a specific process to implement additional efficiency/conservation plan measures. It is possible that, based on the outcome of the Commission's fuel switching working group, a program promoting electric to gas fuel switching could be added to the EDCs' plans. Allegheny Power recognizes that certain of its proposed programs such as recommendations provided through home energy audits could ultimately result in a customer deciding to replace electricity consuming equipment with natural gas fired equipment, as well as programs that might be offered by gas utilities or other initiatives pursued outside of Act 129. However, the June 1, 2009 Order seems clear that this proceeding dealing with initial EDC Plans is not the proceeding in

which an issue described by the Commission as "complicated" and warranting a separate working group should be addressed.⁷

12. Act 129 speaks to energy reduction broadly. This is evident from Section 2806.1(A) of Act 129, which requires each EDC to implement cost-effective energy efficiency and conservation measures to reduce energy demand and consumption within each EDC service territory. The repeated use of the word "energy" and not "electricity" in Act 129 suggests that objective of the Act is broader than reducing electricity demand and consumption; rather, it is to reduce overall energy demand and consumption, including natural gas.

13. Because a fuel substitution program would transfer demand/consumption from one form of energy (electricity) to another (natural gas, which is a non-alternative energy source) and given the inability to calculate energy savings from fuel switching, fuel substitution is not a feasible method of achieving the stated goal of Act 129 to reduce overall energy demand/consumption at this time. Neither is fuel substitution necessary as an efficiency measure, as efficiency could also be achieved by replacing appliances/equipment of the same energy source. Thus, fuel substitution is not an energy conservation or efficiency measure that should be included in an EDC's initial EE&C Plan.

14. In conclusion, the UGI Distribution Companies have failed to establish eligibility to intervene in the above matter. The UGI Distribution Companies' sole basis for intervention is to promote the inclusion of a fuel substitution program in Allegheny Power's EE&C Plan. However, the Commission's TRM Order supports that it is improper to include fuel substitution programs in the EDCs' initial EE&C Plans in order

⁷ June 1, 2009 Order at 9.

to meet the requirements of Act 129. Given the policy issues surrounding fuel switching that have been referred to a working group, it is premature to consider the merits of fuel switching in the initial EE&C Plans. Therefore, the promotion of a fuel switching program in the initial EE&C Plans is not in the public interest, and does not constitute a direct interest or any other interest that is sufficient to warrant intervention.

WHEREFORE, West Penn Power d/b/a Allegheny Power respectfully requests that the intervention request of the UGI Distribution Companies be denied.

Dated: July 20, 2009

Respectfully submitted,



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Counsel for West Penn Power Company
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VERIFICATION

I, EDWARD C. MILLER, hereby verify that the statements in the foregoing document are true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.



Signature

Dated: July 20, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of West Penn Power Company :
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through a Reconcilable Adjustment Clause :
and Approval of Matters Relating to the :
Energy Efficiency and Conservation Plan :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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Date: July 20, 2009



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