**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105**

Public Meeting held October 14, 2011

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley - Absent

Pamela A. Witmer, Statement

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| Petition of UGI Utilities, Inc.- Electric Division for Approval of its Energy Efficiency and Conservation Plan | M-2010-2210316 |

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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: the Petition of UGI Utilities, Inc. - Electric Division (UGI or Company) for Approval of its Energy Efficiency and Conservation (EE&C) Plan (Petition); the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Susan D. Colwell, issued July 15, 2011; and the Exceptions to the Recommended Decision filed by UGI, the Office of Consumer Advocate (OCA) and the Office of Trial Staff (OTS) on July 25, 2011. Replies to Exceptions were filed by UGI, the OCA, the OTS and the Office of Small Business Advocate (OSBA) on August 1, 2011.

# Introduction

Act 129 of 2008, P.L. 1592 (Act 129) amended the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to, *inter alia*, require the Commission to develop and adopt an EE&C Program by January 15, 2009. Under Act 129, the Commission’s EE&C Program requires electric distribution companies (EDCs) to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and energy consumption within the service territory of each EDC. 66 Pa. C.S.
§ 2806.1(a). However, Act 129 exempted EDCs with fewer than 100,000 customers from the EE&C Program. 66 Pa. C.S. § 2806.1(l).

On December 23, 2009, the Commission issued a Secretarial Letter (December 2009 Secretarial Letter) addressed to the four EDCs with less than 100,000 customers: Citizens Electric Company, Pike County Light & Power Company, UGI, and Wellsboro Electric Company. In the Secretarial Letter, the Commission stated that customers served by small EDCs also can benefit from EE&C measures designed to help ensure affordable and available electric service. The Commission also stated that, since the initial Act 129 process for the large EDCs had nearly run its course, the Commission was now open to the filing of voluntary EE&C plans by these four smaller EDCs. The Commission recommended that, if an EDC is interested in filing a voluntary program, the plan should be filed within this period of exceptionally low wholesale energy prices. December 2009 Secretarial Letter at 1.

The Commission directed that petitions for approval of voluntary EE&C plans are to be filed in accordance with 52 Pa. Code § 5.41 and must contain the following components:

1. A detailed plan and description of the measures to be offered;
2. Sufficient supporting documentation and verified statements or testimony or both;

3. Proposed energy consumption or peak demand reduction objectives or both, with proposed dates the objectives are to be met;

4. A budget showing total planned expenditures by program and customer class;

5. Tariffs and a section 1307 cost recovery mechanism; and

6. A description of the method for monitoring and verifying plan results.

December 2009 Secretarial Letter at 1.

The Commission anticipated that the proceedings to address petitions for approval of voluntary EE&C plans should conclude with a recommended decision from an ALJ within twelve months of a petition filing date. To facilitate orderly and timely decisions, the Commission encouraged the EDCs to use a stakeholder process in developing voluntary EE&C plans. *Id*.

# History of the Proceeding

On November 9, 2010, UGI filed the instant Petition seeking approval of its EE&C Plan (Plan). On November 29, 2010, Answers to the Petition were filed by the OCA, the OTS, and the OSBA. On December 1, 2010, the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) filed a Petition to Intervene.

On December 13, 2010, a Notice of Prehearing Conference was issued which set a Prehearing Conference for January 5, 2011. Also, on December 13, 2010, a Prehearing Order was issued which directed the filing of a prehearing memo on or before December 30, 2010. Prehearing memos were filed by UGI, the OCA, the OTS, the OSBA and SEF.

The Prehearing Conference was convened as scheduled on January 5, 2011, in Harrisburg. Present and participating through counsel were UGI, the OCA, the OTS, the OSBA and SEF. Subsequent to the Prehearing Conference, the ALJ issued a Scheduling Order on January 12, 2011, that, *inter alia*, established a full litigation schedule, provided for the service of documents, identified a number of issues and delineated discovery modifications. The ALJ stated that a discussion regarding the need for a Public Input hearing revealed that none of the Parties had inquiries from the public regarding a Public Input hearing. [[1]](#footnote-1)

Following the distribution of direct, rebuttal, surrebuttal and rejoinder testimony among the Parties and the ALJ, an evidentiary hearing was held on May 4, 2011, in Harrisburg. The Parties filed Main Briefs on June 2, 2011. Also on June 2, 2011, the Industrial Energy Consumers of Pennsylvania (IECPA)[[2]](#footnote-2) filed an *Amicus Curiae* Brief (A.C.B*.*). The Parties, except SEF, filed Reply Briefs on or before June 14, 2011. The record was closed upon the submission of the Reply Briefs.

By Recommended Decision issued July 15, 2011, the ALJ recommended, *inter alia*, that UGI’s Petition for approval of its EE&C Plan be approved in part, and be denied in part. Exceptions to the Recommended Decision were filed by UGI, the OCA, and the OTS on July 25, 2011. Reply Exceptions were filed by UGI, the OCA, the OTS and the OSBA on August 1, 2011.

# Summary of UGI’s Proposed EE&C Plan

UGI proposed to implement the EE&C Plan over a three-year period, beginning on December 1, 2011, and ending November 30, 2014. UGI explained that its Plan consists of a portfolio of nine programs “designed to provide customer benefits and to meet targeted energy consumption reduction goals established by UGI to be reasonably achievable.” Petition at 5. UGI stated that these programs are designed to achieve an energy consumption reduction goal of three percent on UGI Electric’s system through 2014, or approximately 40,868 MWh. UGI Exh. No. 1 at 2. UGI anticipated that its Plan would produce peak load reductions of approximately one percent annually, although the Company stated that it did not design the EE&C programs with the intent of achieving specific peak load reduction targets. *Id*. The Plan includes the following nine programs:[[3]](#footnote-3)

1. Appliance Rebate Program (Residential Sector/Low-Income Customers);
2. School Energy Education Program (Residential Sector/Low-Income Customers);
3. Compact Fluorescent Lighting Campaign (Residential Sector/Low-Income Customers);
4. Appliance Recycling Program (Residential Sector/Low-Income Customers);
5. Home Energy Efficiency Incentives – Fuel Switching (Residential Sector/Low-Income Customers);
6. Appliance Rebate Program (Commercial and Industrial Sector/Governmental Customers);
7. Commercial and Industrial Custom Incentive Program (Commercial and Industrial Sector/Governmental Customers);
8. HVAC Tune-up Program (Commercial and Industrial Sector/Governmental Customers); and
9. Combined Heat and Power Fuel Switching (Commercial and Industrial Sector/Governmental Customers).

*Id*. at 9.

UGI stated that the residential programs were designed to achieve energy reductions for its low-income customer segment by providing free or reduced pricing for energy conservation measures for those customers. UGI explained that the Compact Fluorescent Lighting program was specifically designed with this customer segment in mind. UGI submitted that other residential programs, such as the Appliance Recycling Program, the Appliance Rebate Program, the Energy Efficiency Incentives – Fuel Switching, and the School Energy Education Program, likely will assist low-income customers to reduce their electricity consumption as well. UGI stated that these programs are in addition to UGI Electric’s already “robust” low-income assistance programs outside the context of this Plan.
*Id*. at 10.

The Plan is designed to expend approximately $8.602 million over the three-year period or approximately $2.867 million per year. This annual budget for expenditures is about 2.3 percent of UGI’s $125.3 million in jurisdictional revenues with gross receipts tax for the period June 1, 2007, through May 31, 2008. Plan at 70; UGI St. No. 3 at 4-5.

UGI proposed to recover the costs of the Plan through a reconcilable adjustment clause (EEC Rider) under 66 Pa. C.S. § 1307 (Section 1307). UGI avers that, since the Plan will benefit both shopping and non-shopping customers, UGI proposes that the EEC Rider be applicable to both default service and choice customers. Because UGI planned to allocate Plan costs to two major customer classes, UGI proposed separate rider calculations for the residential and non-residential classes. The EEC Rider is to become effective with the first quarterly default service rate filing following the Commission’s approval of the Plan and will continue for four years. UGI explained that the EEC Rider is designed to run for a year beyond the three-year implementation period to recover or refund any under- or over-collections that may occur during the third year of the Plan. The EEC Rider will be included in the distribution charges instead of appearing as a separate surcharge on customers’ bills. UGI Exh. No. 1 at 76-77.

UGI estimated that the Total Resource Cost[[4]](#footnote-4) (TRC) overall benefit/cost ratio for the residential programs would be 2.50 and the overall benefit/cost ratio for the non-residential programs would be 1.49. The projected combined benefit/cost ratio for all nine programs is 2.04. *Id.* at 70.

UGI projected that it will lose revenue associated with the reduced energy consumption that will result from the implementation of the Plan. Accordingly, UGI proposed to recover lost revenue though a reconcilable Conservation Development (CD) Rider pursuant to 66 Pa. C.S. § 1307. The lost revenue will be based on the “deemed” savings calculated under the Commission’s Technical Resource Manual (TRM). Like the EEC Rider, *supra*, UGI proposed that the CD Rider be calculated separately for the residential and non-residential classes and be included in the distribution charges on customers’ bills. The CD Rider would become effective with the first quarterly default service rate filing following the Commission’s approval of the Plan and would continue until the effective date of the Company’s next base rate compliance filing. UGI Exh.
No. 1 at 77-78.

# Discussion

The ALJ made thirty-three Findings of Fact and twenty-two Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are expressly or by necessary implication rejected or modified by this Opinion and Order.

## Burden of Proof

UGI bears the burden of proof as the party seeking affirmative relief from the Commission. 66 Pa. C.S. §§ 315, 332. To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence*. Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se‑Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

## Contested Issues

We note at the onset that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### Revenue Recovery Rider

#### Positions of the Parties and the ALJ’s Recommendation

UGI estimated that, if its Plan is successful, it will experience distribution revenue reductions of $310,000, $696,000 and $1,089,000 in the first, second and third years of the Plan, respectively. UGI stated that, given UGI’s small size, these revenue reductions are significant. UGI St. No. 3 at 11. Accordingly, UGI proposed to recover these lost revenues through a reconcilable CD Rider, discussed *supra*.

UGI recognized that Act 129 does not allow the recovery of reduced revenues for the larger EDCs through a reconcilable surcharge, but rather contemplated the recovery of lost revenues through an EDC’s next base rate case. UGI St. No. 3 at 10. UGI stated that a prohibition on recovery of lost revenues outside the context of a rate case represents a significant disincentive to a smaller EDC’s decision to move forward with a voluntary EE&C plan. UGI averred that it is very possible that this reduced revenue could force UGI to file a base rate case much sooner than it otherwise would. UGI argued that, due to the small size of its customer base, the rate case-related administrative costs would “materially burden” its customers, in addition to the costs to develop and implement its EE&C Plan. *Id*. at 11. UGI stated that the impact on its customers “is especially significant” when compared to a larger EDC. *Id*. UGI also argued that the recovery of lost revenues through an adjustable rate mechanism will enhance UGI’s incentive to promote the most cost-effective and energy-efficient conservation measures that ultimately will benefit customers. *Id*. at 4.

In response to the concerns raised by the OCA, the OSBA and the OTS regarding the CD Rider, UGI stated that it would be willing to accept an “appropriately designed” regulatory asset for lost revenue recovery in lieu of the CD Rider. UGI M.B. at 31. Under the regulatory asset approach, UGI would be able to accrue lost revenues, plus interest, in an account, and UGI then would be able to recover those lost revenues plus interest in its next base rate proceeding, whenever that is filed. UGI St. No. 3R at 8.

UGI submitted that, when the Commission investigated ways to encourage the implementation of conservation through demand side management (DSM) in its *DSM Order*,[[5]](#footnote-5) the Commission’s Bureau of Conservation, Economics and Energy Planning proposed lost revenue recovery as an incentive for electric companies to implement DSM programs. UGI averred that the Commission ultimately adopted a lost revenue measure so that EDCs implementing DSM plans would not lose revenues between implementation of the new DSM measures and the company’s next base rate case. UGI stated that the Commission decided to permit EDCs to accrue lost revenues, plus interest, for recovery in the utility’s next base rate case, so as to assure that the utility was “made whole” for its revenue loss associated with actively encouraged conservation. UGI argued that, from a policy perspective, removing disincentives to voluntary reduction plans is, if anything, more necessary today. UGI St. No. 3R at 7-8.

UGI also averred that the Commission presently is considering lost revenue recovery mechanisms and revenue decoupling as rate mechanisms that might be needed to satisfy the American Recovery and Reinvestment Act of 2009 (ARRA) federal funding requirement that a state implement appropriate ratemaking policies for electric and gas utilities to align their financial incentives with the promotion of energy efficiency and conservation. UGI argued that its lost revenue recovery proposal is consistent with the spirit of the ARRA. UGI St. No. 3R at 8.

The OCA, the OTS, the OSBA and IECPA all oppose the recovery of lost revenue that will result from the implementation of the Plan, regardless of the method of recovery. The OCA, the OTS, and the OSBA all pointed to the provisions of Act 129 that address lost or decreased revenue. In pertinent part, Section 2806.1(k) provides:

(2) Except as set forth in paragraph (3), decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.

(3) Decreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under section 1308 (relating to voluntary changes in rates).

66 Pa. C.S. § 2806.1(k)(2) and (3).

The OCA stated that the General Assembly has provided strong public policy guidance with regard to this issue. The OCA averred that reduced revenue may not be recovered by means of a surcharge, only as part of a base rate case and then only by reflecting that reduction in the prospective revenue and sales data submitted for the purpose of determining the new rates. OCA M.B. at 12.

The OSBA stated that the fact that UGI submitted the Petition on a voluntary basis does not resolve the “unlawfulness” of its CD Rider. OSBA M.B. at 3. The OSBA pointed out that, in the December 2009 Secretarial Letter, the Commission recognized that small EDCs, such as UGI, might file EE&C Plans that would vary somewhat from the mandates set forth in Act 129. The OSBA opined that the Commission envisioned a voluntary EE&C Plan that would closely follow Act 129, not depart from the Act on such a fundamental principle as the prohibition of revenue decoupling. *Id*. at 3.

The OCA argued that, even if the provisions of Act 129 regarding lost revenue recovery do not apply to a small EDC like UGI, allowing UGI’s lost revenue claim would result in “impermissible” single-issue ratemaking. OCA M.B. at 12. IECPA explained that single-issue ratemaking occurs when only one element of a general ratemaking equation is examined. IECPA averred that single-issue ratemaking is “fundamentally unfair and inequitable” because it does not permit the Commission to examine other savings or expense adjustments that may favor consumers. IECPA A.C.B*.* at 6. The OCA’s witness Geoffrey Crandall explained that expenses that have been avoided as a result of energy efficiency programs, such as “expensive power supply costs or other expensive peak-sensitive operating costs” would not be given credit in the calculation of lost revenue recovery proposed by UGI. OCA St. No. 1 at 16. The OCA also averred that, in *Pennsylvania Indus. Energy Coalition v. Pa. PUC,* 653 A.2d 1336 (Pa. Cmwlth. 1995) (*PIEC*), the Commonwealth Court stated that “Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case.” *PIEC* at 1350. The OCA stated that revenues, sales and usage are the very types of items that are normally addressed in a base rate case. OCA M.B. at 12-13.

The OCA argued that UGI’s claim for lost revenue is further flawed because it will be based on the “deemed savings” identified in the TRM for various conservation measures, which are not appropriate for ratemaking purposes. OCA R.B.
 at 8. OCA witness Crandall testified that the “deemed savings” values from the TRM are developed using information from all over the state and may be “dissimilar” to the UGI service territory and therefore not transferable. OCA St. No. 1 at 23-34. Mr. Crandall averred that, because this approach would be implemented for a relatively small energy efficiency program, the estimation and quantification of energy savings would not be subject “to a rigorous evaluation, measurement, and verification analysis.” OCA St. No. 1-S at 16.

IECPA stated that Section 1319(a) of the Code, 66 Pa. C.S. § 1319(a) (Section 1319(a)) specifically addresses the costs that can be recovered by an EDC that institutes a voluntary EE&C Plan. IECPA A.C.B. at 8. Specifically, Section 1319(a) provides, in pertinent part:

(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 or 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… .

IECPA argued that lost distribution revenues are not “costs” associated with the development, management, financing or operation of UGI’s program and are not recoverable under Section 1319. IECPA A.C.B. at 8-9.

The OSBA averred that there is no basis to UGI’s argument that, if the Commission does not approve the CD Rider, UGI would have to file a base rate case much sooner than it otherwise would. The OSBA explained that, based on UGI’s calculations, the Company’s adjusted return on equity (ROE) for the twelve months ending December 31, 2010, was 11.55 percent, and that a $1 million erosion in revenue from the Plan would reduce the ROE to about ten percent. The OSBA pointed out that UGI witness William McAllister, testified that a 9.5 percent ROE would only cause the Company to start to consider the base rate process. The OSBA argued that “considering” a base rate case is far from actually making a formal base rate filing. OSBA M.B. at 13-15.

The OCA averred that, as a result of the Plan’s heavy reliance on fuel switching, the erosion of revenue to UGI (Electric Division) will not mean an erosion of revenue to UGI as a corporate entity. OCA M.B. at 17. OCA witness Crandall explained that, under the Plan, UGI would pay a “large” incentive for customers to switch to natural gas and the incentive would be paid for by electric ratepayers. OCA St. No. 1 at 13. Mr. Crandall also stated that, through the proposed CD Rider, UGI would receive revenue compensation to make it whole for reduced sales due to fuel switching, also paid for by electric ratepayers. Mr. Crandall projected that UGI Penn Natural Gas would experience increased revenues from UGI (Electric) customers that switched to natural gas. Mr. Crandall concluded that UGI would suffer no loss as a result of the CD Rider and the earnings of UGI’s affiliates would probably “gain.” *Id.*

In her Recommended Decision, the ALJ provided three principal reasons why UGI’s proposed CD Rider should not be approved.

First, the ALJ opined that this mechanism is contrary to the express language of a recent Commonwealth Court decision, *Popowsky v. Pa. PUC,* 13 A.3d 583, 591 (Pa. Cmwlth. 2011) (*Popowsky 2011).[[6]](#footnote-6)* The ALJ noted thatthe Court specifically stated:

Section 1307(a) of the Code, *Masthope, PIEC*, and *Popowsky 2005*[[7]](#footnote-7) support the proposition that surcharge recovery is available under Section 1307(a) of the Code (1) where expressly authorized by the General Assembly, or (2) where an expense is easily *identifiable* and beyond the utility’s control. The basis for this distinction lies with the PUC’s review under Section 1307(a) of the Code, which this Court described in *Masthope* as follows:

[T]he [PUC]’s review is appropriately characterized as preliminary and cursory. Indeed, the very function of the typical automatic adjustment clause is to permit rapid recovery of a specific, identifiable expense item, with a more comprehensive analysis upon reconciliation of actual costs with previously projected costs used to establish the effective rate. The initial process is essentially a mathematical review of the projections provided by the public utility.

*Masthope*, 581 A.2d at 1000 (emphasis in original). Only where the “mathematical” review performed under Section 1307(a) of the Code is inadequate to determine whether a surcharge is “just and reasonable,” is express statutory authority required for surcharge recovery.

R.D. at 28-29 quoting *Popowsky 2011* at 591 (footnote deleted). The ALJ stated that here, the proposed mechanism is not expressly authorized by the General Assembly, and the expense is not “easily identifiable and beyond the utility’s control.” R.D. at 28-29. The ALJ found that “[r]ather the expense is *within* the utility’s control because it is incurred as part of a *voluntary* EE&C plan which is *required* to prove that the costs are ‘reasonable and prudent,’ Secretarial Letter of December 23, 2009 at 2, before they can be recouped.” *Id*. at 29. (emphasis in original). The ALJ concluded that granting this mechanism would be directly contrary to the express language of the Commonwealth Court in *Popowsky 2011*, because it would grant automatic recovery of costs without the evaluation of whether they were reasonably and prudently incurred. R.D. at 28-29.

Second, the ALJ concurred with the OCA’s position that the “deemed savings” generated by the TRM are not the type of empirically verified savings upon which lost revenues should be measured for purposes of determining what customers pay. The ALJ found that the TRM is not meant to be used for rate-making purposes, and that relying on this measure for use in an automatic adjustment mechanism would result in unjust and unreasonable rates. *Id*. at 29-30.

Third, the ALJ was not persuaded by UGI’s argument that, because Act 129 does not require small EDCs to participate, the prohibitions and guidance regarding cost recovery should not apply to small EDCs. The ALJ opined “that if the legislature had wanted to include small EDCs in Act 129, then it would have done so, and if it had, it would have included specific direction regarding cost recovery.” *Id.* at 30. The ALJ stated that Act 129 does not require small EDCs to file EE&C plans, and therefore, there was no reason to include a ban on lost revenue recovery mechanisms specific to voluntary plans filed by the smaller companies. The ALJ found that the lack of a specific ban in Act 129 does not make the inclusion of that mechanism a good idea. The ALJ concluded that it is far more logical to expect that, if the smaller EDCs decide to participate in energy conservation programs similar to the large EDCs, they can expect to recover their costs in a manner similar to the large EDCs. *Id*.

In addition, the ALJ was not persuaded by UGI’s argument that the denial of the CD Rider would necessarily lead to an earlier base rate case for the Company. The ALJ also recognized the OCA’s argument that revenue reductions resulting from the implementation of the Plan would be offset by revenue increases for other UGI affiliates. *Id*. at 31.

In its Exceptions to the Recommended Decision, UGI submits that there is no legal impediment, either in Act 129 or elsewhere, to the Commission’s adoption of a lost revenue recovery mechanism. UGI Exc. at 1. UGI states that neither Act 129 nor the Act’s lost revenue prohibition applies to UGI because it is an EDC with fewer than 100,000 customers. UGI avers that the statute could not be clearer in this regard and the ALJ’s attempt to amend the statute by extending the prohibition on lost revenue recovery to UGI violates the fundamental rules of statutory construction. UGI opines that, if the Legislature wanted to require smaller EDCs to file EE&C plans and to prevent them from recovering lost revenues outside of a base rate case, it would have drafted the statute to include small EDCs. *Id*. at 3.

UGI states that the “inapplicability” of Act 129 does not leave a legal void. UGI avers that Section 1319(a) provides all of the legal authority necessary for the Commission to approve recovery of lost revenues as part of a voluntary EE&C Plan and the *DSM Order* did just that. UGI Exc. at 3. UGI also notes that the January 21, 2011 Working Group Final Report in the Commission’s Investigation at
Docket No. I-2009-2099881[[8]](#footnote-8) (*ARRA Final Report*), stated that “no legal precedent exists that would preclude the Commission from reviewing/approving an RDM [Rate Decoupling Mechanism] or similar ratemaking change for gas utilities under 66 Pa. C.S. § 1307(a).[[9]](#footnote-9) UGI Exc. at 5. UGI argues that the same legal conclusion applies to UGI (Electric), because, given that Act 129 does not apply to EDCs with fewer than 100,000 customers, UGI is in the same legal position as a gas utility for the purposes of lost revenue recovery. *Id*.

UGI excepts to the ALJ’s conclusion that it is logical to expect that smaller EDCs can expect to recover their costs in a manner similar to the large EDCs. UGI argues that logic dictates that a for-profit enterprise will not voluntarily reduce its profits by reducing its sales. UGI submits that, for this reason, the Commission decided in the *DSM Order* that utilities had to be made whole for lost revenue if voluntary DSM programs were to succeed. UGI states that this is why Congress, through the ARRA, is requiring states to have appropriate rate making policies for electric and gas utilities to align their financial incentives with the promotion of energy efficiency and conservation in order to receive federal stimulus funds. UGI also avers that this is why the ARRA Report “reflects on almost every page the working group’s active consideration of ways to remove financial disincentives to the promotion of energy savings, including the lost revenue recovery mechanisms.” UGI Exc. at 15.

UGI opposes the ALJ’s finding that permitting the surcharge recovery of lost revenues is directly contrary to the express language in *Popowsky 2011.*  UGI notes that in *Popowsky 2011,* the Court expressly recognized its findings in *PIEC* that Section 1319(a) of the Code authorizes a surcharge under Section 1307(a) for the recovery of costs associated with the development, management, financing and operation of a conservation or load management program. UGI Exc. at 7-8. UGI included the following language from *Popowsky 2011* in its Exceptions:

In *PIEC*, this Court addressed the issue of whether Section 1307(a) of the Code permits electric utilities to recover demand-side management (DSM) program costs by surcharge. Rejecting the argument that Section 1307(a) of the Code applied only to costs beyond the control of the utility, such as fuel costs and certain taxes, this Court held that a surcharge was available. Critical to our holding was the statutory authority for the surcharge found in Section 1319 of the Code, 66 Pa. C.S. § 1319. We reasoned:

\* \* \*

Because Section 1319 [of the Code] directs the PUC to allow recovery of all prudent and reasonable costs for developing, managing, financing and operating DSM programs and because Section 1307 [of the Code] gives the PUC the discretion to establish by either regulations 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. *PIEC*, 653 A.2d. at 1349.

*Popowsky 2011* at 589 (footnote omitted), quoted in UGI Exc. at 7. UGI explained that, in *PIEC*, the Court did not have the opportunity to expressly consider whether Section 1319(a) authorized 1307(a) recovery of lost revenue; however, the Commission clearly held in the *DSM Order* that lost revenues are “costs” recoverable under Section 1319. UGI Exc. at 7.

UGI also excepts to the ALJ’s application of the standards set forth in *Popowsky 2011* that a surcharge is available under Section 1307(a) “where the expense is easily identifiable and beyond the utility’s control.” UGI Exc. at 8. UGI avers that lost revenues are easily identifiable because they are quantified directly by the deemed KWh savings derived from the TRM. As for whether voluntary conservation programs are beyond the utility’s control, UGI argues that the Commission already decided in the *DSM Order*, and the Commonwealth Court affirmed in *PIEC,* that costs incurred to implement voluntary conservation plans that arise between rate cases may be recovered outside of the rate base recovery regime. UGI Exc. at 8.

UGI states that the ALJ erroneously adopted the arguments advanced by the OCA and IECPA that lost revenue recovery violates the “just and reasonable” requirement of Section 1301, because the impact of the lost revenues is “highly speculative” and therefore cannot be examined properly except in a base rate proceeding. UGI avers that *PIEC* challenged the Commission’s *DSM Order’s* allowance of regulatory asset treatment of lost revenues on this same basis. UGI explains that, although the Court declined to reach the issue on the grounds of ripeness due to the then-difficult task of accurately calculating the actual amount of revenue lost as a result of a conservation program, the Court recognized “the possibility that a sufficiently reliable calculation could be developed.” *PIEC* at 1352. UGI Exc. at 13. UGI submits that the “deemed savings” values developed in the TRM to quantify electricity savings for Pennsylvania’s conservation programs now provide all the specificity and reliability needed that was lacking at the time the Commission adopted the *DSM Order.* UGI states that the “deemed savings” developed in the TRM are the basis upon which the Commission is quantifying electricity savings for Pennsylvania’s conservation programs and all stakeholders have agreed. UGI Exc. at 13.

The OCA, the OSBA and OTS filed Reply Exceptions that, *inter alia*, support the ALJ’s recommendation to reject the proposed revenue recovery mechanism. The OTS states that a dangerous precedent would be set if the Commission were to grant UGI’s first Exception and approve the proposed CD Rider. The OTS projects that the approval of a revenue recovery rider would very likely open the floodgates to filings by other utilities seeking to be equally assured of receiving a guaranteed level of revenues from their customers. The OTS avers that the Commission should recognize that there is a “massive downside” to approving such a revenue guarantee simply to ensure the implementation of a voluntary EE&C Plan. OTS R. Exc. at 8.

#### Disposition

As a preliminary matter, UGI noted that the *ARRA Final Report* reflects the working group’s active consideration of ways to remove financial disincentives to the promotion of energy savings, including lost revenue recovery mechanisms. The Commission recently entered an Opinion and Order to conclude this investigation into Commission actions that might be needed to satisfy the requirements of Section 410(a) of the ARRA. *Compliance of Commonwealth of Pennsylvania with Section 410(a) of the American Recovery and Reinvestment Act of 2009,* Docket No. I-2009-2099881 (Order entered August 1, 2011) (*2011 ARRA Order*). While the *2011* *ARRA Order* addressed a number of positive incentives for utilities to promote energy conservation and the impact of Act 129 on the recovery of lost revenues, the *2011 ARRA* *Order* did *not* address the recovery of lost revenue by utilities *not* subject to Act 129. However, the Commission presented the following observation regarding incentives for EE&C programs:

Positive incentives provide benefits to utilities when they succeed in energy conservation efforts. At the present time Pennsylvania does not provide any such positive incentives to utilities. As utilities generally receive greater earnings when they sell more energy, energy conservation efforts can hurt their bottom line. Providing positive incentives can cushion the impact on earnings and “put utilities in the energy conservation business.”

*2011 ARRA* Order at 23-24.

We applaud UGI for accepting our invitation to file a voluntary EE&C plan and we fully appreciate the financial disincentive that the lost revenues that result from a successful EE&C plan has on a utility. However, we will not approve the CD Rider or the accrual of a regulatory asset to recover lost revenues from its EE&C Plan for the following reasons.

In the *DSM Order*, the Commission declined to allow for the recovery of lost revenue through a surcharge, and instead permitted the utilities to create a “balancing account” for lost revenue that would be treated as a regulatory asset in a base rate proceeding. The Commission found that lost revenues are much more difficult to measure than DSM program costs, and determined that lost revenue should be based on actual program results that are verified through the ratemaking process. *DSM Order* at 33. Specifically, the Commission stated:

In considering this issue, we concur with the ALJ's recommendation to not permit the recovery of lost revenues through the DSM surcharge mechanism, but rather in base rate proceedings. We are sympathetic to the arguments of the utilities that prompt recovery through a surcharge mechanism would serve to promote more extensive DSM implementation. However, lost revenues are, by their nature, much more difficult to measure than DSM program costs. Therefore, we feel it necessary to require that these costs be recovered through a base rate proceeding so that they are based on actual program results, as verified through the ratemaking process.

*Id.*

In the Commonwealth Court’s review of the *DSM Order*, the Court determined that it was “too speculative” to determine whether a “reliable” calculation of lost revenue could be created, and concluded that the matter was not ripe for review. *PIEC* at 1352*.*  The Court stated:

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](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000262&DocName=PA66S1319&FindType=L) 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. The Industrial Coalition asserts that no calculation of lost revenues could accurately determine what revenues were lost due solely to a DSM program. While we agree, as did the PUC, that lost revenues are difficult to measure, there is the possibility that a sufficiently reliable calculation could be developed. Until the PUC develops a calculation for the award of lost revenues, whether a non-speculative calculation can be developed is too speculative to consider and the matter is not yet ripe for review.

*Id.* (emphasis in original).

UGI argues that calculation of lost revenue would not be speculative if the Commission’s TRM were used to quantify energy savings that result in lost revenue for UGI. UGI Exc. at 19. While we do not concur with the OCA that utilizing the energy savings estimates produced by the TRM “would be highly speculative in nature,” we agree with the OCA that TRM results are not suited for ratemaking. The TRM has been developed and is being enhanced on an ongoing basis to, *inter alia*, determine compliance with the energy and demand reduction targets established by Act 129 and to support the TRC test requirements of the Act. The TRM has been rigorously and carefully prepared and we believe that it is well-suited to meet those objectives. However, as pointed out by the OCA, the “deemed savings” generated by the TRM are developed “using information from all over the state.” We concur with the OCA that the TRM does not have the necessary precision upon which to base a dollar-for-dollar recovery of lost revenue from ratepayers. OCA St. No. 1 at 24.

As discussed *supra*, UGI avers that Section 1319(a) provides all of the legal authority necessary for the Commission to approve recovery of lost revenues as part of a voluntary EE&C Plan. However, we concur with IECPA that lost distribution revenues are not “costs” associated with development, management, financing or operation of UGI’s program and are not recoverable under Section 1319(a). In addition, the General Assembly made a distinction in Act 129 between the recovery of “costs” and “decreased revenues”. 66 Pa. C.S. § 2806.1(k)(2). The General Assembly’s distinction between “costs” and “decreased revenues” in Act 129 confirms that the term “costs” in Section 1319(a) does not include lost revenue.

Although UGI’s voluntary Plan is not required by Act 129, the record in this proceeding does not support a deviation from the guidance provided by the cost and revenue recovery provisions set forth in the Act. Moreover, unlike the known and certain Plan expenses to be recovered through UGI’s proposed EEC Rider, the method proposed by UGI to estimate lost revenue lacks the precision necessary for a dollar-for-dollar recovery through the proposed CD Rider or as a regulatory asset. At this juncture, we find that decreased revenue that may result from UGI’s EE&C Plan should be addressed and recovered in a base rate proceeding where appropriate adjustments can be made in the context of actual changes in overall Company revenue and expenses. Consequently, we reject the proposed CD Rider and decline to approve a provision for the recovery of lost revenue through a regulatory asset.

### Residential Fuel Switching Program

#### Amount of the Incentives and the Incentives for Propane

##### (i) Positions of the Parties and the ALJ’s Recommendation

Through its Home Energy Efficiency Incentives Program, UGI proposes to offer rebate incentives for residential (including low-income) customers to replace their electric water heaters, space heating systems and clothes dryers with gas and propane appliances. The Plan explains that these incentives will be offered where such appliances are more cost-effective under the TRC test than their electric counterparts. The Plan states that, to make the program affordable for customers, the proposed water heating and clothes dryer incentives equal one hundred percent of the anticipated incremental cost the customer incurs in making the fuel switch. For the space heating measure, the incentive equals seventy-five percent of the anticipated incremental cost. The Plan proposes to offer fixed incentives of $900 to replace a water heater, $830 for a clothes dryer replacement, and $4,850 for a space heating conversion. UGI Exh. No. 1 at 57-58.

The OCA found the incentives to be too high and recommended that they be reduced by fifty percent. The OCA noted that the incentives proposed by UGI include certain infrastructure costs. For example, the OCA stated that, for the water heating, clothes dryer and space heating conversions, the Company’s incentives include $150 for the cost of the piping. In addition, for a space heating conversion, the OCA pointed out that the incentive includes $1,500 to cover the cost of a new service line to bring the gas from the main in the street to the house. The OCA argued that incorporating these infrastructure costs into the incentives is neither appropriate nor necessary. The OCA opined that it is inappropriate to ask UGI’s (electric) customers to pay for gas infrastructure costs that will eventually “rebound” to the benefit of the natural gas supplier. OCA M.B. at 19. The OCA explained that paying for infrastructure costs should not be necessary because the customer will realize operational savings over the life of the new appliance. *Id*.

The OCA also averred that, even if infrastructure costs are removed from the incentive payments, the incentive payments remain too high. OCA witness Crandall testified that a one-hundred percent incentive is not needed in order to induce customers to participate, especially when programs are new and targets are quite low. Mr. Crandall opined that offering a lower rebate will adequately incent those customers that are likely to participate. He averred that, if the energy savings goals of the program can be accomplished with lower rebates, the money saved can be used for other programs to increase the overall savings level. OCA St. No. 1 at 19-20.

The OTS recommended the complete elimination of the fuel switching program. OTS St. No. 1 at 19. OTS witness Scott Granger testified that, if the Commission chooses to retain the Fuel Switching Programs, he would recommend scaling back the incentives by as much as seventy percent ($270 for water heaters, $250 for clothes dryers, and $1,455 for furnaces). *Id.* at 20. Mr. Granger opined that the “incentive” may be greater than the retail price of a new natural gas appliance. *Id.* at 16.

UGI explained that there is no direct experience with other utility plans that UGI can use as a benchmark or guide. UGI admitted that “much judgment is involved in attempting to predict what it will take to persuade a customer to switch from an electric water heater, clothes dryer or furnace.” UGI M.B. at 39. UGI witness Paul Raab testified that the likelihood of a customer that does not have gas service switching an electric appliance to a gas appliance is small because it rarely occurs in practice. Mr. Raab also explained that UGI electric customers regularly purchase high efficiency equipment. Mr. Raab opined that these observations suggest that larger incentives will be required to move the market from electric appliances to natural gas appliances. UGI St. No. 2RJ at 9-10. Mr. Raab stated that UGI wants the Plan to succeed, and to accomplish this goal, it makes sense to err on the side of an incentive that turns out in retrospect to be too large. Mr. Raab submitted that, if these incentives turn out to be too large, the incentives always can be reduced as UGI gains experience with them. UGI St. 2R at 21.

The ALJ recommended that the size of the incentives offered by UGI should be brought into line with the other EDCs that offer fuel switching incentives. The ALJ stated that PPL Electric Utilities Corporation (PPL) offers $300 toward a heat pump water heater and Allegheny Power offers $225 toward a new gas water heater. The ALJ also noted that Allegheny Power and PECO Energy Company will replace a non-functioning furnace for low-income customers while PPL offers $550 for a high-efficiency gas furnace for its thermal storage rate customers only.[[10]](#footnote-10) The ALJ concluded that UGI’s proposed $900 incentive for a water heater is far too high and should be cut by at least half and that the $830 incentive for a clothes dryer should also be cut in half. The ALJ recommended that the $4,850 incentive for a space heating conversion should be cut to no more than $1,000.[[11]](#footnote-11) R.D. at 38-39.

In its Exceptions, UGI states that the comparisons the ALJ made to other EDC incentive plans were cited for the first time in the Recommended Decision and were never introduced into the record by any party. UGI recommends that the Commission reject this component of the Recommended Decision “out of hand” because it violates fundamental due process rights. UGI Exc. at 27.

UGI urges the Commission to retain one-hundred percent of the incentives that were initially proposed. UGI avers that most of the dollars allocated to this program will be spent on the electric to natural gas fuel switch incentive and this component alone accounts for almost a third of the Plan’s overall TRC net benefits with a TRC benefit/cost ratio of 2.08. UGI R. Exc. at 28.

Although the ALJ recommended limiting the fuel switching incentives to different levels than those proposed by the OCA and the OTS, both Parties expressed their support for the ALJ’s determination in their respective Reply Exceptions. OCA R. Exc. at 18-21; OTS R. Exc. at 9-12.

**(ii) Disposition**

In June 2009, the Commission established the Fuel Switching Working Group (FSWG) as part of the proceedings in the *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual (TRM)* at Docket No. M‑00051865 (Order entered June 1, 2009). The initial charge of the FSWG was to identify, research and address issues related to fuel switching with the possibility of the inclusion of fuel switching related deemed energy savings in future versions of the TRM. As part of the Commission’s disposition of the initial EE&C plans filed by the EDCs to comply with Act 129, the Commission approved the fuel switching programs proposed by the EDCs pending the Commission’s review of the FSWG’s recommendations. [[12]](#footnote-12) The Commission also directed the FSWG to submit its recommendations to the Commission by March 31, 2010. By letter issued December 10, 2009, [[13]](#footnote-13) the Commission set forth eight questions for the FSWG to address. One of the questions posed was, if fuel switching programs are permitted, “should there be a cap on the level of subsidy [incentive] provided,” and if there is a cap, “what should the cap be?”

By Secretarial Letter dated May 21, 2010 (May 2010 Secretarial Letter), the Commission noted that the FSWG could not reach a “true consensus” on any of the topics raised. The May 2010 Secretarial Letter explained that, since there was no true consensus, the Commission Staff developed the Act 129 Fuel Switching Working Group Staff Report (FSWG Staff Report) that sets forth the topics raised, the positions of the participants, and a Commission staff recommendation. May 2010 Secretarial Letter at 2. The Commission also, *inter alia*, adopted the staff recommendations in the FSWG Staff Report. May 2010 Secretarial Letter at 3.

In the FSWG Staff Report, the Commission Staff provided the following recommendation regarding caps on fuel switching incentives:

Staff agrees with the positions of SEF and OSBA that, for the purposes of the TRC test, EE&C plan incentive payments are irrelevant. As such, staff finds that a strict cap on such payments may not be necessary. However, staff finds that EE&C plan incentive payments should be limited to the extent that excessively high incentive payments for any fuel switching program detract from the ability of an EDC to fund other programs and maintain a diversified portfolio of EE&C programs. Again, the amount of incentives to be offered in any proposed fuel switching measure should be developed through the EDC’s EE&C plan stakeholder process and presented for Commission approval through the processes set forth in the *Implementation Order*.[[14]](#footnote-14)

FSWG Staff Report at 11-12 (footnote supplied).

Our preference would be to assess the priority of the incentives proposed by UGI on a more empirical basis utilizing participation rates for similar incentives offered by other EDCs in conjunction with the costs and benefits of the incentives realized by UGI’s ratepayers. However, as UGI explained, *supra*, the record in this proceeding does not contain any evidence of direct experience of other plans so as to establish a benchmark or guide.

While we appreciate UGI’s interest in setting incentive payment levels that will ensure that this program meets the participation objectives, we cannot lose sight that these incentives, ranging between $830 for the conversion to a gas clothes dryer to $4,850 for a conversion to a gas furnace, are being funded by a surcharge on UGI’s electric ratepayers. To that end, we must ensure that these funds are used as effectively as possible to foster conservation and load management on UGI’s system.

We note that the direct costs of the three residential fuel switching incentives are projected to total about $2.8 million, which is about fifty-eight percent of the budgeted cost of all residential programs (excluding additional administrative costs[[15]](#footnote-15)) and thirty-two percent of the entire $8.6 million budget for the Plan. UGI Exh. 1 at 5, 62-63. In consideration of the recommendation in the FSWG report “that plan incentive payments should be limited to the extent that excessively high incentive payments for any fuel switching program detract from the ability of an EDC to fund other programs and maintain a diversified portfolio of EE&C programs,” we find that the portion of program resources allocated to the residential fuel switching program is too large and the incentives are too high. Accordingly, we shall adopt the recommendation of the OTS that the incentives proposed by UGI be reduced by seventy percent. This reduction will result in a $270 incentive to install a gas water heater, a $250 incentive for a clothes dryer replacement, and a $1,455 incentive for a space heating conversion.

The record in this proceeding indicates that the proposed fuel switching incentives for the conversion to propane are not cost effective. In response to a SEF interrogatory, which inquired whether the fuel switching incentives would be offered to all technologies and energy sources, UGI responded that alternatives other than natural gas and propane “would inherently result in either lower TRC test results or TRC test results less than the required 1.0 (indicating lower program effectiveness by comparison).” SEF Exh. No. 1, Schedule No. 1, SEF I-2. However, in response to another SEF Interrogatory, UGI presented data which projects that the benefit/cost ratio for the conversion of electric water heating to propane would be 0.49. *Id*., Schedule No. 4, SEF-III-1.[[16]](#footnote-16) Therefore, since a benefit/cost ratio of 0.49 indicates that the incentives for the conversion of electric water heating to propane are not cost-effective, we find that the fuel switching incentives for propane should not be included in UGI’s Plan at this time.

If fuel switching incentives for propane are to be considered for EE&C Plans in the future, we believe that appropriate measures should be developed in the TRM. The TRM currently contains measures for the conversion of electric domestic hot water, domestic hot water heat pump and electric heat to gas. By its TRM Annual Update Tentative Order (*TRM Tentative Order*),*[[17]](#footnote-17)* the Commission is seeking Comments on the proposed 2012 update to the TRM. If UGI, or other parties, are interested in pursuing incentives for the conversion of electric appliances to propane, they may submit Comments in support of including propane fuel switching measures in the 2012 TRM. Alternatively, UGI, or other parties, may work with the Commission’s Act 129 Technical Working Group to address changes in subsequent versions of the TRM.

We recognize that, after reducing the incentives proposed by UGI by seventy percent, the adjusted incentives will still be higher than the fuel switching incentives offered by other EDCs. Therefore, we shall direct UGI to include, as part of the annual reports to be filed with the Commission pursuant to the approved EE&C Plan, a comparison of the participation rates and the TRC benefit/cost ratios of its fuel switching incentives with those presented in the EE&C annual reports of other Pennsylvania EDCs with fuel switching incentives. From this comparison, UGI shall address whether modifications to its fuel switching incentives are warranted.

#### Low Income Customers and Fuel Switching to Propane

##### (i) Positions of the Parties and the ALJ’s Recommendation

 The OCA was opposed to the availability of an incentive for low-income customers to switch to an unregulated fuel such as propane. The OCA was concerned about the loss of consumer protections under the Code that would result if a low-income customer switches from an electric space heating system to one fueled by propane. OCA M.B. at 27. In the Recommended Decision, the ALJ, *inter alia*, declined to restrict the availability of incentives for the conversion to propane for low-income customers. R.D. 40-43. The OCA excepted to the ALJ’s recommendation and UGI filed Reply Exceptions on this issue. OCA Exc. at 2-4; UGI R. Exc. at 6-7.

##### (ii) Disposition

Since we are not approving UGI’s proposed incentives for the conversion of electric appliances to propane, *supra*, this issue is moot.

####  Use of High Efficiency Equipment

##### (i) Positions of the Parties and the ALJ’s Recommendation

Under its Home Energy Efficiency Incentives Program, UGI proposes to offer fuel switching incentives for “[a]ll natural gas water heaters,” “[a]ll natural gas dryers” and “[a]ll natural gas furnaces.” UGI Exh. 1 at 60.

The OCA argues that, if any fuel switching incentives are offered, the natural gas and propane equipment installed under the residential program should be high efficiency. OCA witness Crandall testified that providing incentives for standard efficiency equipment unnecessarily increases energy consumption and costs. Mr. Crandall stated that the program “contributes to the impression that the proposed fuel switching program is intended to build gas load and increase company revenues rather than save energy.” OCA St. No. 1 at 16. The OCA also noted that, in the Commission’s Tentative Order regarding *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions (2011 TRC Tentative Order[[18]](#footnote-18))*, the Commission indicated that its proposed resolution of the issue is that new equipment installed to replace electric equipment should be high efficiency equipment. OCA M.B. at 26.

UGI objected to the OCA’s proposed modification because the goal of its Plan is to reduce electricity consumption, which is the same regardless of whether or not the appliances replacing the electric appliances are high efficiency. UGI argued that reducing gas consumption is the role of the gas company, not the electric company. In addition, UGI warned that adopting the OCA recommendations to both reduce the incentive payments and add a high efficiency requirement would be dangerous to the success of the Plan because high efficiency appliances generally cost more than those which are not high efficiency. UGI M.B. at 42-43.

The ALJ recommended that, for purposes of this Plan and the incentives it provides, appliances that are to be substituted for electric appliances should be highly efficient. The ALJ opined that it makes little sense from an overall policy standpoint to encourage reduced usage of one form of energy without encouraging the best use of the substituted fuel, especially when funded at the expense of ratepayers. R.D. at 46.

UGI argues that, given that high efficiency gas water heaters, clothes dryers and furnaces are significantly more expensive than their standard efficiency counterparts, the Commission should not “raise the bar” on a “fledgling” EE&C plan by significantly increasing the customer contribution needed to switch to a gas appliance. UGI notes that the *TRC* *Tentative Order* is not a final resolution and recommends that the Commission should approve the program as filed and consider an amendment to UGI’s Plan, if and when the Commission finalizes the *2011 TRC Tentative Order*. UGI avers that, if the Commission were to adopt the ALJ’s recommendation to require high efficiency gas appliances, the Commission should reject any reduction in the incentive payments for fuel switching because of the higher costs of energy efficient appliances. UGI Exc. at 31.

UGI also recommends that the Commission should reconsider the position taken in the *2011 TRC Tentative Order* on this issue. UGI avers that there is no basis for requiring electric customers to pay incentives for devices that will decrease natural gas consumption, which is the responsibility of the natural gas distribution company. *Id*. at 31. UGI witness Raab testified that, if UGI (Electric) were to pay UGI Penn Natural Gas customers to install high efficiency natural gas appliances, this would be a clear case of UGI Electric subsidizing the conservation and energy efficiency activities of UGI Penn Natural Gas.  Mr. Raab argued that, once the electric load has been removed from the UGI Electric system, UGI Electric customers get no additional electric load reduction from the more costly investment in a high efficiency gas appliance, and UGI Electric customers should not be expected to pay for that. UGI St. No. 2-R at 23.

In its Reply Exceptions, the OCA states that regardless of whether the Commission has adopted the *2011 TRC Tentative Order*, the underlying policy of requiring high efficiency equipment is sound. The OCA supports the ALJ’s finding that fuel switching induced at the ratepayers’ expense should encourage the best use of the substituted fuel. OCA R. Exc. at 23.

##### (ii) Disposition

Subsequent to the filing of Exceptions in this proceeding, the Commission entered the Final Order in *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions[[19]](#footnote-19) (2011 TRC Final Order).* After considering the Comments on the *2011 TRC Tentative Order*,the Commission made the following findings regarding fuel switching appliance efficiency:

We agree with DEP’s submission that only equipment earning the EPA’s ENERGY STAR performance rating should be eligible for inclusion in EE&C fuel switching plans. However, we note this provision is only applicable to fuel switching proposals where there is EPA ENERGY STAR performance rated equipment available for installation.

Duquesne’s concerns that the Commission intends to promote or discourage fuel switching are unfounded. We did not intend to promote or discourage fuel switching with the language in the Tentative Order but simply to note that when fuel switching does occur, the Commission will encourage the switch to occur to the highest efficiency equipment available.

*2011 TRC Final Order* at 30.

The Commission also addressed the utilization of fuel switching incentives to encourage the purchase of high efficiency appliances in its *2012 TRM Tentative Order.*

We are concerned, however, that improperly constructed incentives could unfairly impact non-electric fuel sources. Essentially, improperly constructed rebates could be construed as marketing devices that incentivize fuel switching for the primary purpose of increasing market share, as opposed to incentivizing efficient use of energy. We believe the focus of the rebates should be to encourage the purchase of high efficiency appliances by those customers who had already decided to change energy sources and we will base our review of proposed rebates on such a premise.

*2012 TRM Tentative Order* at 12.

Consistent with the Commission’s findings in the *2011 TRC Final Order* and the *2012 TRM Tentative Order,* we find that natural gas and propane appliances that are eligible for a fuel switching incentive payment must carry an EPA ENERGY STAR performance rating, if such appliances are available. In addition, we do not agree with UGI’s arguments that its electric customers will be subsidizing the conservation activities of a gas utility. UGI is offering fixed incentives and there will be no additional EE&C Plan costs if high efficiency appliances are installed. Moreover, if an electric utility is diverting new energy demand to a gas utility, that incremental demand should consume gas resources in an efficient manner. High efficiency appliances reduce any impact that the incremental gas consumption might have on the rates of existing gas utility customers. Accordingly, we shall direct UGI to modify the Home Energy Efficiency Incentives Program to require that natural gas and propane appliances eligible for incentive payments must carry an EPA ENERGY STAR performance rating, where available, to be eligible for an incentive.

### Reduction in Total Plan Expenditure Levels

UGI’s Plan is designed to expend approximately $8.6 million over the three-year period or approximately $2.867 million per year. This annual budget for expenditures is about 2.3 percent of the Company’s $125.3 million in jurisdictional revenues with gross receipts tax for the period June 1, 2007, through May 31, 2008. UGI Exh.1 70; UGI St. No. 3 at 5.

#### Positions of the Parties and the ALJ’s Recommendation

The OCA argued that the Company has not justified its proposed expenditure level, particularly in view of the fact that its fuel-switching incentive payment levels are unnecessarily high. OCA M.B. at 29. OSBA witness Knecht recommended that the average annual spending for the life of the Plan should be limited to two percent of annual revenues to be consistent with Act 129. OSBA St. No. 1 at 9; OSBA St. No. 3 at 6. The OCA concurred with the OSBA witness Knecht’s recommendation. OCA M.B. at 29.

The OTS recommended that, in conjunction with the other Plan modifications proposed by OTS, the expenditure ceiling be lowered to sixty percent of the ceiling established by Act 129 or to 1.2 percent of the Company’s jurisdictional revenues. OTS M.B. at 32-34. The OTS pointed to the December 2009 Secretarial Letter which stated that, “we recognize the Act 129 program contains 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.” December 2009 Secretarial Letter at 2. The OTS averred that the Commission should recognize that UGI has only 60,000 customers, or sixty percent of Act 129’s 100,000-customer threshold for mandatory participation in the Act. OTS M.B. at 32-34. The OTS also recommended that computation of the expenditure cap should be based on “the twelve months ended in 2006” that was used for Act 129 Plans, rather that the “twelve month period ended in 2008” used by UGI. *Id*. at 34.

The ALJ noted that the difference between a 2.3 percent spending cap and a two percent cap represents a difference of $300,000, which she opined “is a measurable amount when allocated to this Company’s 60,000 customers, and an unacceptable one when taking into consideration that the fuel switching incentives are too high as proposed.” R.D. at 50. The ALJ recommended that UGI be directed to reduce the costs of its EE&C Plan to no higher than two percent of its revenue, consistent with the requirements imposed on the larger EDCs by Act 129. *Id.*

The OTS excepts to the ALJ’s recommendation. In addition to its arguments, *supra*, the OTS states that scaling back the level of plan expenditures to 1.2 percent of annual revenues “is the perfect remedy” for UGI’s claim that the reduced energy consumption that would result from its EE&C Plan would adversely affect its bottom line and accelerate the filing of a base rate case. OTS Exc. at 6-7. The OTS avers that UGI’s argument indicates that the scope and extent of the proposed Plan is too large in relation to UGI’s smaller size since it would represent too large a decrease in its revenues. *Id*. at 7.

In response to the OTS’ Exceptions, UGI states that a drastic reduction in expenditures would rob its Plan of the scope and scale it needs to generate projected benefits. UGI also avers that the OTS did not offer a “coherent roadmap” for restructuring the Plan to accommodate the “drastic” budget cuts it proposed. UGI argues that, assuming the Plan could even survive an expenditure cut of nearly half, the Company would need to start from scratch to assemble a scaled back set of programs with sufficient TRC benefits and the related administrative services to implement and support them. UGI notes that the two percent budget cap recommended by the ALJ mirrors the requirements of Act 129. UGI R.E. Exc. at 2-4.

#### Disposition

Consistent with our finding that the incentives for fuel switching should be reduced, we concur with the ALJ that the expenditure cap should be reduced to two percent of annual jurisdictional revenue. While we appreciate the OTS’ interest in reducing the impact of Plan costs on UGI’s customers, the record in this proceeding does not enable us to determine the level of energy savings that would be realized at reduced program expenditures of that magnitude and whether UGI would be able to achieve equal or better TRC benefit/cost ratios with a smaller program.

We also recognize that UGI compared its Plan expenditures to annual revenues from a different twelve-month period than the twelve months ending December 31, 2006, required by 66 Pa. C.S. § 2806.1(g). As noted in the December 2009 Secretarial Letter, the cost limits contained in Act 129 are not applicable to voluntary EE&C Plans. Moreover, since UGI’s voluntary Plan is likely to be launched roughly two years after the mandatory EE&C Plans, the June 1, 2007 through May 31, 2008 revenue level used as a benchmark by UGI is reasonable.

## Other Changes to UGI’s Plan

In the Recommended Decision, the ALJ recommended the following changes to the Plan that were not contested by any of the Parties.

### Additional Customer Class

#### Positions of the Parties and the ALJ’s Recommendation

The Plan proposes to allocate and recover costs from two customer classes: residential and non-residential. UGI St. 3 at 8. After the exchange of testimony, UGI and the OSBA agreed to split the non-residential class into a large non-residential class, consisting of Rate LP and Rate IH load, and a small non‑residential class consisting of the other non-residential tariff customers. OSBA M.B. at 17-18; UGI M.B. at 46-47. The OTS and the OCA had no objection to this provision. OTS M.B. at 36; OCA M.B. at 30-31.

The ALJ noted that Act 129 requires that the cost of the EE&C programs be recovered from the customer class that receives the direct energy and conservation benefit of those measures. 66 Pa. C.S. § 2806.1(a)(11). The ALJ concluded that the agreement between UGI and the OSBA to establish a third rate class for cost recovery is in the public interest and should be adopted. R.D. at 50.

#### Disposition

We concur with the ALJ. Adding the third rate category should more accurately allocate the Plan costs to the customers in the rate class that can potentially benefit from those measures.

### Expansion or Modification of Customer Education

#### Positions of the Parties and the ALJ’s Recommendation

In his testimony, OCA witness Crandall expressed concern over the lack of public awareness of the energy consumption of plasma televisions and home entertainment systems, as well as “phantom load” (devices using electricity when plugged in but not turned on). OCA M.B. at 31. Mr. Crandall recommended that UGI’s Plan should address these concerns by including public education activities, with special emphasis on energy consumption of home entertainment systems, televisions and phantom power loads. *Id*.

In response to the OCA’s recommendation, UGI responded that it did not have an unlimited budget and must use its dollars on an array of well-rounded programs that together meet the cost-effectiveness test as determined by the TRC calculations. UGI averred that the Plan, as presented by UGI, achieves these goals without expansion of its consumer education program. UGI also averred that the benefit of educational programs is difficult to quantify in terms of energy savings. UGI M.B. at 47. However, in his rebuttal testimony, UGI witness Raab made the following statement about the inclusion of an education program in the future:

UGI is at the beginning of the process of offering energy efficiency programs to its customers. The level of interest in and the ultimate cost-effectiveness of these efforts are still uncertain. Given this uncertainty, I believe it is far more important for the Company to verify program cost-effectiveness. When that has been established, the Company can use the program cost-effectiveness information to develop a proposed budget and scope of a general energy efficiency education program, while ensuring that its overall portfolio of energy efficiency programs remains cost-effective.

UGI St. No. 2R at 13.

In its Reply Brief, the OCA encouraged the Commission to take UGI up on its offer. The OCA recommended that UGI should be directed to develop an energy efficiency education component to its Plan when the cost-effectiveness of its Plan has been established. OCA R.B. at 17.

The ALJ concurred with the OCA. The ALJ stated, “While this particular educational component may not be suitable for a fledgling EE&C plan for a small EDC, the Company is expected to establish the cost-effectiveness of its EE&C programs following their implementation, and then to develop an energy efficiency education component for future years.” R.D. at 51.

#### Disposition

Customer education programs can be a very cost-effective way to achieve energy and demand savings. Customer education programs can induce customers to implement behavioral changes at a relatively low cost for the EDC. For example, we note that PPL’s Residential Energy Efficiency Behavior and Education component of its EE&C Plan is projected to result in a benefit/cost ratio of 3.66. PPL Energy Efficiency and Conservation Plan, Docket M-2009-2093216 (Order entered February 28, 2011) at 118. While the benefit/cost ratio that UGI realizes from an education program likely will be different than the ratio projected by PPL, we expect that the benefit/cost ratio will be equal or higher than the estimated average benefit/cost ratio of 2.50 for all of UGI’s residential programs. UGI Exh. 1 at 70**.** Accordingly, we shall direct UGI to amend its Plan to include an education program.

UGI shall file a Plan amendment to include an education program within 180 days of the entry of this Opinion and Order, in order for the Plan to be reviewed and approved in time for the program to commence at the beginning of the second program year of UGI’s Plan. In developing the education program, UGI should leverage its existing efforts, such as its “Energy Guy at UGI” initiative. We also encourage UGI to work with the Parties and stakeholders to make these existing education facilities more comprehensive and effective in educating consumers about methods of reducing energy consumption at minimum cost.

### Notice Period for Changes in Plan Rider Charges

#### Positions of the Parties and the ALJ’s Recommendation

The Plan calls for interim filings to the EEC and CD Riders in order to accommodate significant deviations in over- or under-recovery, which the Company proposed become effective on one day’s notice. UGI Exh. 1 at 77-78.

The OCA recommended that the notice be increased to thirty days, and the Company agreed. OCA M.B. at 35-36; UGI M.B. at 50-51. The ALJ found a thirty-day period to be reasonable and recommended that it be adopted. R.D. at 54.

#### Disposition

Our regulations at 52 Pa. Code § 53.31 require that, unless otherwise ordered by the Commission, a public utility may not change an existing and duly established tariff, except after sixty days notice to the public. Although the OCA, UGI and the ALJ are in agreement on a thirty-day notice period, we see no reason to condense the Commission’s review of changes in the EEC Rider. As discussed, *supra*, the proposed EEC Rider is designed to run for a year beyond the three-year implementation period of the Plan to recover or refund any under- or over-collections that may occur during the third year of the Plan. Since there will be a full year to resolve any under- or over-collections beyond the proposed life of the Plan, expedited adjustments to the EEC Rider are not necessary. Accordingly, we will not grant a waiver of 52 Pa. Code
§ 53.31 and we reject the ALJ’s recommendation that the notice period for changes to the CD rider be set at thirty days. Therefore, any changes to UGI’s proposed EEC[[20]](#footnote-20) Rider shall be filed to become effective on sixty days notice.

### Inclusion of Solar Thermal Water Heating

#### Positions of the Parties and the ALJ’s Recommendation

UGI explained that SEF presented testimony in support of the addition of solar thermal water heating to the Plan, and provided the necessary TRC calculations to demonstrate its cost effectiveness. UGI stated that, after reviewing SEF’s calculations, the Company reached a Stipulation with the SEF, agreeing to adopt solar thermal water heating as a technology to be recognized and incentivized under the Plan. UGI M.B. at 53-54.

#### Disposition

Considering that the residential fuel switching incentives proposed by UGI were limited to gas or propane appliances, the addition of solar thermal water heating is a welcome addition to both the residential and commercial incentive programs. As UGI gains more experience with its EE&C Plan, we encourage the Company to consider the feasibility and cost-effectiveness of other alternate fuel sources, such as boilers and furnaces using coal and wood.

## Other Issues

### Annual Review of the Plan

#### Positions of the Parties and the ALJ’s Recommendation

The OSBA pointed out that Act 129 requires the larger EDCs to meet specific mandatory targets and to face penalties if they fail to meet those targets, which creates a standard that must be met in order to justify the EE&C programs. The OSBA averred that, as a voluntary filer, UGI does not have to meet that standard, and therefore, there should be another method of determining the success of the Plan. OSBA M.B. at 21-22. The OSBA stated that “the potential denial of recovery of costs which are not reasonable and prudent would provide a financial incentive for the Company to spend ratepayer‑provided funds in a cost-effective manner.” *Id*. at 22. Therefore, the OSBA recommended that the Commission should order an after-the-fact prudence review of costs as part of the annual review and reconciliation of UGI’s EE&C Plan contemplated by the December 2009 Secretarial Letter*.*  *Id.*

UGI submitted that the Plan contains an extensive evaluation process, which incorporates quality assurance and evaluation, audit and verification processes, and measurement of outcomes. UGI stated that this evaluation will be performed at various stages of program implementation, with the Company conducting a self-review annually. UGI explained that a report detailing this self-review will be provided to the Commission within three months following the end of each program year. UGI averred that, by suggesting an additional formal prudence review, the OSBA attempts to hold the Company to a more stringent standard of review than that imposed upon the large EDCs by Act 129. UGI argued that UGI’s proposed review process is no different than the self-review required by 66 Pa. C.S. § 2806.1(b)(l)(i)(J) on an annual basis. UGI M.B. at 52.

The ALJ noted the following language contained in the December 2009 Secretarial Letter:

In order to track the progress and success of voluntary EE&C plans, the Commission will require all EDCs filing a voluntary EE&C plan to submit an annual report to the Commission detailing the results of its EE&C plan, its cost-effectiveness and any additional information required by this Commission.

December 2009 Secretarial Letter at 2. The ALJ concluded that the December 2009 Secretarial Letter required the Company to submit an annual report to the Commission detailing the results of its EE&C Plan and its cost-effectiveness. R.D. at 55.

#### Disposition

We concur with the OSBA to the extent that we need to delineate a process for interested parties to participate in the annual review of UGI’s Plan. By Secretarial Letter issued May 25, 2011, at Docket M-2008-2069887, the Commission required that, EDCs subject to Act 129, must file three quarterly reports and a preliminary and final annual report each program year. However, the resources that must be expended by UGI to participate in this review process must be proportionate to the relatively small size of its EE&C Plan and the number of customers that UGI serves. Therefore, at this juncture, we believe that a single annual report is appropriate for the voluntary program submitted by UGI.

In the *Implementation Order*,the Commission addressed the process for interested parties to make recommendations on the EE&C Plans approved by the Commission pursuant to Act 129. Under that process, EDCs and other interested parties were permitted to submit recommendations in conjunction with the EDC’s annual report. Specifically, interested parties could submit recommendations for plan improvements, or object to proposed plan revisions, within thirty days of the filing of an EDC’s annual report on its EE&C Plan. EDCs were provided twenty days to submit replies to any recommended changes. The *Implementation Order* also stated that the Commission will post the annual reports on the Commission web site and that the annual reports are to be served on the OCA, the OSBA and the OTS. *Implementation Order* at 23-24.

Consistent with the *Implementation Order*, we shall direct UGI to serve its annual report, [[21]](#footnote-21) as well as any petitions to modify its Plan on the OCA, the OSBA and the OTS, concurrent with any filings made with the Commission.[[22]](#footnote-22) The Commission will post the annual reports and any petitions to modify UGI’s Plan on the Commission’s EE&C program web page. Any interested party can submit recommendations for Plan improvements or object to UGI’s proposed Plan revisions within thirty days of the filing of the annual report. Interested parties will have twenty days to file replies to any recommendations or objections.[[23]](#footnote-23) Following the conclusion of the comment period, the Commission will make a determination on how to proceed with any comments and recommendations.

### PJM Market Auctions

#### Positions of the Parties and the ALJ’s Recommendation

OCA witness Crandall recommended that as UGI “implements and fine-tunes” its Plan, UGI should do a feasibility analysis of whether there are any benefits to ratepayers if it was to participate in the PJM demand response bidding auctions. OCA St. No. 1 at 24-25. Mr. Crandall also suggested that any financial incentives emanating from successful PJM bidding should be used to reduce the cost of the EE&C Plan. *Id*.

UGI Witness Raab stated in rebuttal testimony that he saw no reason why the Company would not follow the OCA’s recommendation. UGI St. No. 2R at 26. In its Reply Brief, UGI stated that it would not object if the Commission were to direct UGI to investigate the feasibility of utilizing any energy efficiency savings and demand response reductions that result from the Plan's programs to bid into PJM's market auctions, and to use any revenue received from the auctions as an offset to the costs of the Plan recovered through the EEC Rider. UGI R.B. at 32.

#### Disposition

In recognition of the OCA’s and UGI’s concurrence on this opportunity, we shall direct UGI to include in its annual reports on the Plan, a summary of its progress in participating in PJM market auctions. In addition, any revenue received from participation in PJM market auctions shall be an offset to the costs of the Energy Efficiency and Conservation Plan recovered through the EEC Rider.

# Conclusion

For the reasons set forth, *supra*, we will grant in part, and deny in part, the Petition consistent with this Opinion and Order. UGI shall file a revised black-lined Plan consistent with this Opinion and Order within sixty days of the date of entry of this Opinion and Order. UGI shall serve the revised, black-lined Plan on all Parties of record in this proceeding. Interested parties will have ten days to file comments on the revised portions of the Plan, with reply comments due ten days thereafter. UGI is permitted to implement any portion of its Plan that is not modified by this Opinion and Order. Additionally, we shall adopt the Recommended Decision, as modified by this Opinion and Order and deny the Exceptions of UGI, the OCA and the OTS. **THEREFORE**;

**IT IS ORDERED:**

1. That the Exceptions of UGI Utilities, Inc.- Electric Division to the Recommended Decision of Administrative Law Judge Susan D. Colwell, issued July 15, 2011, are denied.
2. That the Exceptions of the Office of Consumer Advocate to the Recommended Decision of Administrative Law Judge Susan D. Colwell, issued July 15, 2011, are denied.
3. That the Exceptions of the Office of Trial Staff to the Recommended Decision of Administrative Law Judge Susan D. Colwell, issued July 15, 2011, are denied.
4. That the Recommended Decision of Administrative Law Judge Susan D. Colwell, issued July 15, 2011, is adopted, as modified by this Opinion and Order.
5. That the Petition of UGI Utilities, Inc.- Electric Division for Approval of its Energy Efficiency and Conservation Plan, filed on November 9, 2010, is granted, in part, and denied, in part, consistent with this Opinion and Order.
6. That the Energy Efficiency and Conservation Plan filed by UGI Utilities, Inc. – Electric Division on November 9, 2010, is approved in part, and rejected in part, consistent with this Opinion and Order.
7. That the Conservation Development Rider filed as part of UGI Utilities, Inc.- Electric Division’s Energy Efficiency and Conservation Plan is rejected.
8. That, consistent with 52 Pa. Code § 53.51, any changes to the Energy Efficiency and Conservation Rider shall be filed to become effective on sixty (60) days notice. This notice requirement does not apply to the initial revised Energy Efficiency and Conservation Rider filed in response to this Opinion and Order.
9. That the proposed fuel switching incentives for customers participating in the Home Energy Incentives Program shall be reduced by seventy percent (70.0%) of the incentives proposed in the Energy Efficiency and Conservation Plan.
10. That the proposed fuel switching incentives for customers converting an electric space heater, water heater, or clothes dryer to propane shall be deleted from the Energy Efficiency and Conservation Plan.
11. That the Home Energy Incentives Program shall be modified to require that natural gas appliances eligible for incentive payments must carry an EPA ENERGY STAR performance rating, where available, to be eligible for an incentive.
12. That the Home Energy Efficiency Incentives Program and the Commercial and Industrial Custom Incentive Program shall be modified to include solar thermal water heating as a technology to be recognized and incentivized under the Energy Efficiency and Conservation Plan.
13. That the annual expenditures for the Energy Efficiency and Conservation Plan shall be limited to two percent (2.0%) of the $125.3 million of jurisdictional revenue, including gross receipts tax, for the period June 1, 2007 through May 31, 2008.
14. That the costs of the Energy Efficiency and Conservation Plan shall be allocated to, and recovered from three customer classes: (1) a residential class; (2) a large non-residential class consisting of customers receiving service under Rate LP and Rate IH; and (3) a small non-residential class consisting of non-residential customers receiving service under tariffs other than Rate LP and Rate IH.
15. That within 180 days of the entry of this Opinion and Order, UGI shall file an amendment to its Energy Efficiency and Conservation Plan to include a customer education program commencing at the beginning of the second program year of the Energy Efficiency and Conservation Plan.
16. That UGI Utilities, Inc.- Electric Division shall file annual reports with the Commission detailing, *inter alia*, the results and cost-effectiveness of its Energy Efficiency and Conservation Plan. These reports shall be filed within three months of the end of each of the three program years established in the revised Energy Efficiency and Conservation Plan
17. That the annual reports referenced in Ordering Paragraph No. 16, *supra*, shall contain a comparison of the participation rates and benefit-cost ratios of UGI Utilities, Inc.- Electric Division’s residential fuel switching incentive program to the performance of the residential fuel switching programs administered by the other Pennsylvania electric distribution utilities. Based on that comparison, UGI Utilities, Inc.- Electric Division shall address whether modifications to the levels of its fuel switching incentives are warranted.
18. That UGI Utilities, Inc.- Electric Division shall serve the annual reports referenced in Ordering Paragraph No. 16, *supra,* on the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff concurrent with the filing of the annual reports with the Commission.
19. That UGI Utilities, Inc.- Electric Division shall investigate the feasibility of utilizing any energy efficiency savings and demand response reductions that result from the Energy Efficiency and Conservation Plan to bid into PJM’s market auctions. UGI Utilities, Inc. - Electric Division shall include a summary of its progress in participating in PJM market auctions in the annual reports referenced in Ordering Paragraph No. 16, *supra.*
20. That any revenue received from participation in PJM market auctions, as addressed in Ordering Paragraph No. 19, *supra*, shall be an offset to the costs of the Energy Efficiency and Conservation Plan recovered through the Energy Efficiency and Conservation Rider.
21. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.
22. That, UGI Utilities, Inc.- Electric Division shall file a revised, black-lined Energy Efficiency and Conservation Plan consistent with this Opinion and Order within sixty days of the date this Opinion and Order is entered. UGI Utilities, Inc.- Electric Division shall serve a black-lined, revised Energy Efficiency and Conservation Plan on all Parties of record in this proceeding. Interested parties will have ten (10) days to file comments on the revised portions of the revised Energy Efficiency and Conservation Plan, with any reply comments due within ten (10) days of the filing of the revised Energy Efficiency and Conservation Plan.
23. That UGI Utilities, Inc. – Electric Division is permitted to implement any component of its Energy Efficiency and Conservation Plan to the extent that the component is not affected by the modifications directed by this Opinion and Order.

**BY THE COMMISSION**,

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 14, 2011

ORDER ENTERED: October 19, 2011

1. UGI explained that, by letter dated November 9, 2010, all of its electric stakeholders were notified of the filing of its Plan and were provided with directions to access the Plan on UGI’s website. UGI stated that, aside from the public advocates and the SEF, no stakeholder or other potentially interested party expressed a desire to participate in this proceeding. UGI M.B. at 4. [↑](#footnote-ref-1)
2. The IECPA includes 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. [↑](#footnote-ref-2)
3. UGI noted that that all Residential Sector programs also apply to governmental and non-profit entities such as firehouses, ambulance providers and senior centers. [↑](#footnote-ref-3)
4. The December 2009 Secretarial Letter states that the Total Resource Cost test as defined by 66 Pa. C.S. § 2806.1 (m) and applied by the Commission in its proceedings at Docket M-2009-2108601 will also apply to all Voluntary EE&C Plans to determine whether each proposed EE&C Plan is cost-effective. December 2009 Secretarial Letter at 1-2. [↑](#footnote-ref-4)
5. *Investigation Into Demand Side Management By Electric Utilities - Uniform Cost Recovery Mechanism,* 80 Pa. P.U.C. 608, 633-641, Docket No. I-900005 (Order entered December 13, 1993). [↑](#footnote-ref-5)
6. In this case, the OCA petitioned for review of a Commission Order entered April 15, 2010, at Docket No. R-2009-2117550, wherein the Commission authorized Newtown Artesian Water Company to recover increases in purchased water expenses through an automatic rate adjustment mechanism pursuant to 66 Pa. C.S. § 1307(a). [↑](#footnote-ref-6)
7. 66 Pa. C.S. § 1307(a); *Masthope Rapids Property Owners Council v. Pa. PUC*, 581 A.2d 994 (Pa. Cmwlth. 1990); *Pennsylvania Industrial Energy Coalition v. Pa. PUC,* 653 A.2d 1336 (Pa. Cmwlth. 1995), *affirmed*, 543 Pa. 307, 670 A.2d 1152 (1996) (*PIEC*); *Popowsky v. Pa. PUC,* 869 A.2d 1144 (Pa. Cmwlth. 2005), *appeal denied*, 586 Pa. 761, 895 A.2d 552 (2006) (*Popowsky 2005*). [↑](#footnote-ref-7)
8. As discussed *infra*, the Commission entered an Opinion and Order concluding this investigation on August 11, 2011. [↑](#footnote-ref-8)
9. *ARRA Final Report*, at 31 n. 42. [↑](#footnote-ref-9)
10. We also note that PECO’s Home Energy Incentives Program offers a $1,000 incentive for customers with electric baseboard heating and a $550 incentive for customers with a heat pump to install a high efficiency gas furnace. PECO’s EE&C Plan also offers a $250 incentive for the conversion to a high efficiency gas hot water heater. These incentives were approved by the Commission in PECO’s initial EE&C Plan. *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (Order entered October 28, 2009) (*October 2009 PECO EE&C Order*). PECO has maintained this incentive in its most recent Revised Plan approved by Secretarial Letter dated August 18, 2011, at Docket No. M-2009-2093215. PECO Energy Efficiency and Conservation Plan (Program Years 2009-2012), (Plan Revision filed August 18, 2011). [↑](#footnote-ref-10)
11. While the ALJ recommended specific dollar limits to the fuel switching incentives in the body of the Recommended Decision, Ordering Paragraph No. 3.a. of the Recommended Decision provides that the incentives for water heating and clothes drying “shall not exceed 50% of the incremental cost the customer will incur in making the fuel switch” and Ordering Paragraph No. 3.b. states that the incentive for switching from electric heating “shall not exceed 50% of the customers’ cost in making the switch.” [↑](#footnote-ref-11)
12. For example, *see October 2009 PECO EE&C Order* at 45-48. [↑](#footnote-ref-12)
13. This Letter was issued by the Commission’s Director of Operations. [↑](#footnote-ref-13)
14. *Implementation Order* at Docket No. M-2008-2069887 (Order entered January 16, 2009) (*Implementation Order*). [↑](#footnote-ref-14)
15. Costs not directly allocated to either the Residential or Commercial programs. The Budget and Parity Analysis Summary of the Plan indicates that the $8.6 million total budget is comprised of $4.8 million for Residential programs, $2.7 million for Commercial and Industrial programs and $1.1 million for “Additional Staff, Program, Setup and Development.” This latter category represents about thirteen percent of the total Plan Budget. UGI Exh. 1 at 5. [↑](#footnote-ref-15)
16. This Exhibit does not contain estimates of the benefit/cost ratio for the conversion of space heating and clothes dryers to propane. However, we note that the overall benefit/cost ratio for water heating fuel conversions to natural gas and propane was 2.08, and the overall benefit/cost ratios for space heating and clothes dryer conversions were projected by UGI to be considerably lower than water heating at 1.46 and 1.17, respectively. UGI Exh. No. 1 at 62-63. Consequently, it is reasonable to assume that the benefit/cost ratios for the conversion of space heating and clothes dryers to propane would not be greater than the 0.49 benefit/cost ratio for the conversion of water heating to propane. [↑](#footnote-ref-16)
17. *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical*

*Reference Manual 2012 Update*, Docket No. M-2009-2108601 (Order entered September 23, 2011) (*2012 TRM Tentative Order)*. Notice was published in the *Pennsylvania Bulletin* on October 8, 2011. 41 *Pa.B*. 5464. Written Comments on the proposed 2012 update to the TRM must be filed in twenty days of the date of publication and Reply Comments are due thirty days after publication. [↑](#footnote-ref-17)
18. Docket No. M-2009-2108601 (Order entered May 6, 2011) at 20. [↑](#footnote-ref-18)
19. Docket No. M-2009-2108601 (Order entered August 2, 2011). [↑](#footnote-ref-19)
20. As discussed herein, by this Opinion and Order we are not approving UGI’s proposed CD Rider. [↑](#footnote-ref-20)
21. In its Plan, UGI states that it will report to the Commission within three months after the end of each program year. UGI Exh. 1 at 75. [↑](#footnote-ref-21)
22. Where appropriate, UGI may utilize the expedited review process for minor EE&C plan revisions established in our Final Order at Docket M-2008-2069887 (Order entered June 10, 2011) (*June 2011 Order*). [↑](#footnote-ref-22)
23. The comment periods set forth in the *June 2011 Order* at 19 would apply if UGI submits a Plan revision under the expedited review process. Of course, UGI may submit proposed Plan revisions at any time; UGI need not file proposed changes in conjunction with its annual report. For a proposed change that is not filed in conjunction with an annual report, if the expedited review process does not apply, the comment periods set forth at pages 14-15 of the *July 2011 Order* will apply. [↑](#footnote-ref-23)