

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Utilities, Inc. – Gas Division for	:	P-2013-2398833
Approval of a Distribution System Improvement	:	
Charge	:	
	:	
	:	
Office of Consumer Advocate	:	
	:	
v.	:	C-2016-2540745
	:	
	:	
UGI Utilities, Inc. – Gas Division	:	

RECOMMENDED DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision recommends approval of the Joint Petition for Settlement of All Issues in this Distribution System Improvement Charge (DSIC) proceeding submitted by UGI Utilities, Inc. – Gas Division, the Office of Consumer Advocate and UGI Industrial Intervenors (the Settling Parties) without modification. The decision also recommends that the Formal Complaint filed by the Office of Consumer Advocate be deemed satisfied.

I. HISTORY OF THE PROCEEDING

A. The Parties

UGI Utilities, Inc. – Gas Division (UGI-GD or Company) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. UGI-GD is in the business of selling and distributing natural gas to retail customers within the Commonwealth, and is therefore a “public utility” within the meaning of Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, subject to the regulatory jurisdiction of the Commission. UGI-GD provides natural gas service to approximately 379,000 customers in and around Eastern and Central Pennsylvania, pursuant to certificates of public convenience granted by the Commission. Its system contains approximately 5,599 miles of natural gas distribution mains and 122 miles of natural gas transmission mains as of December 31, 2015. (UGI-GD Petition, pp. 1-2).

The Bureau of Investigation and Enforcement (I&E) serves as the Commission’s prosecutorial bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge.

The Office of Consumer Advocate (OCA) is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. Section 309-2.

The Office of Small Business Advocate (OSBA) is authorized and directed to represent the interest of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41-399.50.

UGI Industrial Intervenors (UGIII) is an organization of industrial customers of UGI-GD and as relevant to this proceeding, includes the following: ArcelorMittal Steelton, LLC; Carpenter Technology Corporation, East Penn Manufacturing Company, and Lehigh Heavy Forge Corporation.

B. The Filings and Orders

On December 12, 2013, UGI-GD filed a *Petition for Approval of its Long Term Infrastructure Improvement Plan* (“LTIIIP Petition”) pursuant to Section 1352 of the Public Utility Code, 66 Pa.C.S. § 1352. The Company’s LTIIIP included the following seven major elements:

- (a) Types and age of eligible property;
- (b) Schedule for its planned repair and replacement;
- (c) Location of the eligible property;
- (d) Reasonable estimate of the quantity of property to be improved;
- (e) Projected annual expenditures and measures to ensure that plan is cost effective;
- (f) Manner in which replacement of aging infrastructure will be accelerated and how repair, improvement or replacement will maintain safe and reliable service; and
- (g) A workforce management and training program.

UGI-GD’s LTIIIP Petition described the Company’s plans to replace all of its cast iron pipelines over a 13-year period ending in February 2027, and to replace all bare steel and wrought iron pipelines over a 28-year period ending September 2041. In addition to its mains, UGI-GD identified other infrastructure repair and replacement that the Company would address in the five-year period covered by the LTIIIP.

On January 2, 2014, the OCA filed Comments to the LTIIP Petition.

On January 17, 2014, the OSBA filed a Notice of Intervention, Notice of Appearance and Public Statement to the LTIIP Petition.

By Order entered July 31, 2014, the Commission approved UGI-GD's LTIIP Petition.

On February 29, 2016, UGI-GD filed its *Petition to Modify the Long Term Infrastructure Improvement Plan* ("Modified LTIIP"). The Modified LTIIP significantly increased the capital spending associated with DSIC-eligible projects. The Modified LTIIP increased spending on projects addressing system pressures to higher volume demand areas, regulator station improvements and installations, corrosion control and weatherization of facilities, and Pennsylvania Department of Transportation mandated facility relocations.

On March 31, 2016, UGI-GD filed its *Petition of UGI Utilities Inc. – Gas Division for Approval of a Distribution System Improvement Charge* ("DSIC Petition") with the Commission at Docket No. P-2013-2398833. The DSIC Petition sought approval for a DSIC pursuant to 66 Pa.C.S. § 1353. The DSIC Petition included the requirements identified in Section 1353, which are as follows:

- (a) An initial tariff that complies with the model tariff adopted by the Commission, which will include:
 - (i) A description of eligible property;
 - (ii) The effective date of the DSIC;
 - (iii) Computation of the DSIC;
 - (iv) The method for quarterly updates of the DSIC; and
 - (v) A description of consumer protections.

- (b) Testimony, affidavits, exhibits, and other supporting evidence demonstrating that the DSIC is in the public interest;

(c) An LTIP, as described in Section 1352; and

(d) Certification that a base rate case has been filed within five years prior to the filing of the DSIC petition.

On April 19, 2016, OCA filed a Formal Complaint, Answer, and a Notice of Intervention and Public Statement to the DSIC Petition.

On April 20, 2016, OSBA filed a Notice of Intervention and Notice of Appearance.

On May 6, 2016, I&E filed a Notice of Appearance.

On May 9, 2016, UGIII filed a Petition to Intervene and Answer to the Petition.

On June 30, 2016, the Commission issued as Order approving the Modified LTIP.

By Order dated November 9, 2016, the Commission approved the Company's DSIC Petition, allowing the DSIC to go into effect on January 1, 2017 (November 9, 2016 Order). The Commission also granted UGIII's Petition to Intervene.

In its November 2016 Order, the Commission set aside for hearing a single issue raised by UGIII regarding the application of the DSIC to competitive customers. Specifically, on page 22 of the Commission's Order, it stated as follows:

That the following issue be assigned to the Office of Administrative Law Judge for hearing and preparation of a recommended decision:

Whether or not customers receiving service under specific Rate Schedules should be exempt from the DSIC.

November 9, 2016 Order at 22.

In addition to the issue identified by the Commission in its November 9, 2016 Order, OCA notified UGI-GD that it would propose to include tax issues that had become relevant in light of the passage of Act 40, 66 Pa.C.S. § 1301.1 (2016). Specifically, OCA seeks clarification on the impact of Act 40 on the calculation of taxes as part of the DSIC charge, and whether Act 40 alters the reflection of accumulated deferred income tax and the state tax gross-up.

On December 22, 2016, UGI filed its *Initial DSIC Compliance Filing: Supplement No. 3 to Tariff Gas – Pa. P.U.C. No. 6* (UGI Gas Tariff) to be effective on ten days' notice consistent with the Commission November 2016 Order. The Company's DSIC became effective on January 1, 2017, at an initial rate of 0.0%.

On January 13, 2017, UGI-GD filed a *Petition for Rescission* regarding the requirement that UGI-GD file a separate report each year on jobs created by the DSIC. *See* Order, Paragraph 6, page 23. The *Petition for Rescission* is currently pending before the Commission.

C. Prehearing Conference and Settlement

On March 29, 2017, the Commission issued a prehearing conference notice, informing the Parties that the DSIC Petition proceeding was assigned to me. On March 31, 2017, I issued a Prehearing Conference Order. I convened the prehearing conference on April 18, 2017. The Parties who participated in the prehearing conference filed prehearing memoranda identifying potential issues and witnesses. A litigation schedule was established at the initial prehearing conference.

On May 18, 2017, the Settling Parties filed a Joint Petition for Settlement of All Issues and attached their respective Statements in Support of the Settlement (Settlement Petition), and requested Commission approval of the Settlement Petition. Also attached to the Settlement Petition are letters from OSBA and I&E stating they do not oppose the Settlement Petition. *See* Settlement Petition, Appendices D and E.

By Interim Order dated, May 24, 2017, the Settlement Petition was admitted into the record and the record was closed. The Settlement Petition is now ready for ruling.

II. ESSENTIAL TERMS OF SETTLEMENT

The essential terms of the settlement are set forth in Paragraphs 21 through 31 of the Settlement Petition as follows:

A. **EXEMPTION OF CUSTOMERS FROM THE DSIC**

UGI-GD's DSIC rider provides that "the DSIC shall be applied equally to all customer classes, except that the Company may reduce or eliminate the Rider DSIC to any customer with competitive alternatives who are paying flexed or discounted rates and customers having negotiated contracts with the company, if it is reasonably necessary to do so." *See* UGI Gas Tariff (filed December 22, 2016).

21. Pursuant to the UGI Tariff Gas – Pa. P.U.C. No. 6, Supplement 3, the Company agrees to exclude UGIII members ArcelorMittal Steelton, LLC, Carpenter Technology Corporation, East Penn Manufacturing Company, and Lehigh Heavy Forge Corporation, from the DSIC upon the effective date of the DSIC tariff filing (*i.e.*, January 1, 2017). These customers currently meet the tariff requirements for reduction or elimination of the DSIC. The aforementioned UGIII members will continue to be excluded from the DSIC as long as they meet the conditions for exemption under the UGI Gas Tariff.

B. **APPLICATION OF ACT 40 TO UGI-GD's DSIC**

22. Issues regarding the impact of 66 Pa.C.S. § 1301.1 on the treatment of federal and state income tax deductions in calculating the DSIC charge are currently being litigated before the Commission. *See Petition of Metropolitan Edison Co., et. al., for Approval of a DSIC*, Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948. The parties agree that in subsequent DSIC filings, UGI-GD will follow Commission directives regarding whether to exclude or include Accumulated Deferred Income Taxes ("ADIT") and whether or not to adjust the state income tax rate to flow through state income tax deductions and credits in the DSIC calculation.

24. Any other terms or provisions of the UGI-GD DSIC mechanism which are not specifically modified by the Joint Petition for Settlement will be implemented consistent with the DSIC Petition filed by UGI-GD at Docket No. P-2013-2398833 on March 31, 2016 as approved or modified by the Commission in its November 9, [2016] Order.

Further, the Settlement Petition sets forth standard provisions: that the Settlement is proposed by the Settling Parties to settle all issues in this proceeding; that the Settlement may not be cited as precedent in any future proceeding; that the Settlement is the product of compromise; that the Settlement is made without prejudice to each Settling Party's litigation position; that the Settlement is conditioned upon the Commission's approval of the Settlement without modification; that the Settling Parties agree to waive the filing of exceptions and reply exceptions if it is recommended that the Commission adopt the Settlement without modification; that if the Commission fails to grant approval of the Settlement Petition or modifies any material term or condition of the Settlement, any Settling Party may elect to withdraw from the Settlement upon written notice to the Commission and the other parties within five business days of an Order modifying the Settlement and the Settlement will be of no force and effect.

In their respective Statements in Support, each Settling Party submits that the Settlement is in the public interest and respectfully request the following:

1. That the Administrative Law Judge and the Commission approve the Joint Petition for Settlement, including all terms and conditions thereof.
2. That the Commission enter a final Order, consistent with the Joint Petition for Settlement, that: (a) UGIII members ArcelorMittal Steelton, LLC, Carpenter Technology Corporation, East Penn Manufacturing Company, and Lehigh Heavy Forge Corporation are excluded from the DSIC upon the effective date of the DSIC tariff filing and for as long as they meet the conditions for exemption under the UGI Gas Tariff; and (b) that UGI-GD will adopt tax treatment of Act 40 consistent with a final merits decision in *Petition of Metropolitan Edison Co., et. al., for Approval of a DSIC*, at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948.

23. That the Commission terminate and mark closed its inquiry and investigation at Docket Nos. P-2013-2398833 and mark the associated Formal Complaint of the OCA at Docket No. C-2016-2540745 as satisfied and closed.

III. FINDINGS OF FACT

1. Petitioner, UGI Utilities, Inc. – Gas Division, is a jurisdictional public utility providing gas service to Pennsylvania customers as well as a Settling Party in this proceeding.
2. The Commission’s Bureau of Investigation and Enforcement is a party to this proceeding.
3. The Office of Consumer Advocate is a Complainant and Settling Party in this proceeding.
4. UGI Industrial Intervenors is an intervenor and Settling Party in this proceeding.
5. On May 18, 2017, the Settling Parties filed a Joint Petition for Settlement of All Issues along with their respective Statements in Support of the Settlement (Settlement Petition) and requested Commission approval of the Settlement Petition.
6. The Commission’s Bureau of Investigation and Enforcement did not object to the Settlement Petition.
7. The Office of Small Business Advocate did not object to the Settlement Petition.

IV. DISCUSSION

A. Legal Standards

The Commission encourages parties in contested on-the-record proceedings to settle cases. See, 52 Pa.Code §5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden that such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the parties' positions and arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pennsylvania Public Utility Commission v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

Once the settling parties have submitted their joint settlement petition for approval, the principal issue for Commission consideration is whether the agreement serves the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 Pa. PUC 1, 21 (1985); *Pennsylvania Public Utility Commission v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

B. Statements of the Settling Parties in Support of the Settlement

For the Commission's consideration the Settling Parties submitted separate Statements in Support of the Settlement Petition. Their positions are summarized below.

1. UGI-GD's Position

a. Exempting Customers from for the DSIC

UGI-GD submits the Company filed its DSIC Petition on March 31, 2016, and on November 9, 2016, the Commission issued an Order which allowed the DSIC to become effective on January 1, 2017, subject to the final outcome of UGIII's issue: "Whether or not customers receiving service under specific Rate Schedules should be exempt for the DSIC." This issue was referred to the Office of Administrative Law Judge for hearing and resolution. According to UGI-GD, the Settlement Petition resolves the issue in a manner that is consistent with the Public Utility Code and is also in the public interest. UGI-GD St. in Support at 2. Additionally, the Company posits that the Settlement Petition addresses OCA's concerns relating to the impact of Act 40 on the calculation of its DSIC. *Id.*

UGI-GD explains that settlement was achieved through investigation of UGIII's issue and discussion among the Parties. UGI-GD claims that the Settlement Petition fairly balances the interest of the Company and its customers, is in the public interest, and therefore should be approved by the Commission without modification. *Id.*

UGI-GD further explains that the Company's DSIC Petition contained a rider with provisional language which reads as follows: "[T]he DSIC shall be applied equally to all customers classes, except that the Company may reduce or eliminate the Rider DSIC to any customer with competitive alternatives who are paying flexed or discounted rates and customers having negotiated contracts with the Company, if reasonably necessary to do so." UGI-GD argues this provision is consistent with the Commission's directives in *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Order entered Aug. 2, 2012) ("*Final Implementation Order*"), and with the Commission's Orders in other prior DSIC proceedings. *See, e.g., Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282 (Order entered May 22, 2014). *Id.* at 3.

UGI-GD further advances that certain UGIII members, to-wit, ArcelorMittal Steelton, LLC, Carpenter Technology Corporation, East Penn Manufacturing Company, and Lehigh Heavy Forge Corporation, will be excluded from the DSIC, effective January 1, 2017. *Id.* UGI-GD asserts that these exempted customers meet the tariff requirement for reduction or elimination of the DSIC, and therefore this exemption or exclusion is consistent with the language of UGI Tariff Gas–Pa. P.U.C. No. 6, Supplement 3. *Id.* These exempted customers will continue to be excluded from the DSIC as long as they meet the conditions for exemption under the UGI Gas Tariff, the Company asserts. *Id.*

Concerning the public interest, UGI-GD contends as follows:

This settlement provision is in the public interest because it adequately addresses the concerns of competitively situated customers, while balancing the interest of the public in having as many customers on the system as possible contribute to DSIC related expenditures. As the Commission indicated in its *Final Implementation Order*, for customers with competitive alternatives who are being charged negotiated or contract rates, the utility is often already charging the maximum amount that the customer will agree to pay before that customer seeks to exercise its competitive alternatives. *See, e.g., Final Implementation Order, at p. 44.* The Commission has recognized that the loss of competitive customers would be detrimental to the utility and its smaller business and residential customers, and that the utility therefore needs the ability to eliminate or reduce the DSIC charge in order to maintain its large industrial customers. Specifically, the Commission stated:

Where the customer has negotiated rates based on competitive alternatives, it would be contrary to the contract terms and counterproductive in the long term to add costs that may induce the customer to leave the system and provide no support for infrastructure costs.

Final Implementation Order, p. 46. Consistent with the Commission's Final Implementation Order, UGI-GD's tariff provides for the flexibility to determine whether individual competitive customers are in such a position as to be excluded from the DSIC.

Id. 3-4.

UGI-GD further explains in reviewing the positions of each of the UGIII members claiming to be eligible for exemption, the Company was able to determine that each of those members met the criteria established in the Company's tariff. Thus, UGI-GD offered to eliminate the DSIC as to each of the qualifying customers, thereby effectuating the Commission's intent in its *Final Implementation Order*. *Id.* 4

The Company adds that under the Settlement the effective date for exempting certain customers is January 1, 2017. This effective date coincides with the initial effective date of UGI-GD's DSIC which has been a 0.0% since January 1, 2017. *Id.* 4-5. Therefore, under the Settlement the effective date is consistent with the Commission's November 9, 2016 Order implementing the DSIC, thereby ensuring reconciliation and refund will reach back to the date the Company's DSIC first became effective. *Id.*

b. Application of Act 40 to UGI-GD's DSIC

Turning to OCA's issue, UGI-GD explains that OCA was concerned about the impact of Act 40, 66 Pa.C.S § 1301.1 (effective June 12, 2016), on the calculation of taxes as part of the DSIC charge, and whether Act 40, which took effect on August 12, 2016, alters the reflection of accumulated deferred income tax and the state tax gross-up. *Id.* at 5.

Act 40, in pertinent part provides as follows:

If an expense or investment is allowed to be included in a public utility's rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates.

66 Pa.C.S § 1301.1.

UGI-GD notes that ACT 40 became effective after the March 31, 2016 filing date of its DSIC Petition. *Id.* However, UGI-GD states that OCA and the Company have mutually agreed to address certain tax issues that became relevant in light of the passage of Act 40. "Further, the question of whether the DSIC calculation is impacted by Act 40 is currently being

addressed in *Petition of Metropolitan Edison Co., et. al., for Approval of a DSIC*, at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948 (“Act 40 Proceeding”). UGI-GD St. in Support at 5. Thus, UGI-GD proffers the Settling Parties have agreed that since the impact of Act 40 on the treatment of federal and state income tax deductions in calculating the DSIC charge is currently before the Commission, this issue will be addressed in subsequent DSIC filings. *Id.* Additionally, the Settling Parties agreed that the Company will follow the Commission directives regarding whether to exclude or include Accumulated Deferred Income Taxes (ADIT) and whether or not to adjust the state income tax rate to flow through state income tax deductions and credits in the DSIC calculation. *Id.* at 5-6.

UGI-GD concludes its supporting statement as follows:

This settlement provision is in the public interest because it maximizes administrative efficiency and judicial economy. It allows UGI-GD and the other parties to avoid future additional litigation on an issue that will have already been addressed by the Commission. Therefore, it serves the public interest for UGI-GD to agree that it will modify its DSIC calculation in accordance with the Commission’s directives in the Act 40 Proceeding, once a Final Order has been entered.

Id. at 6.

2. OCA’s Position

In the introductory part of its Statement in Support of Joint Petition for Settlement of All Issues, OCA notes the procedural history of this case and recites the essential terms and conditions of the Settlement Petition. Further, OCA agrees with UGI-GD that the proposed tariff and settlement language are consistent with the Commission’s *Final Implementation Order*, which states as follows:

Act 11 does not overturn the existing requirements of recovery based on cost-causation and non-discrimination, and that utilities should have the flexibility to not apply the DSIC surcharge to customers with competitive alternatives and customers having negotiated contracts from the utility.

Where the customer has negotiated rates based on competitive alternatives, it would be contrary to the contract terms and counterproductive in the long term to add costs that may induce the customer to leave the system and provide no support for infrastructure costs.

In re: Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Final Implementation Order at 46 (Aug. 2, 2012).

OCA St. in Support at 4.

OCA notes that the Settlement provides that if the tariff conditions which presently exempt certain customers are not met on a going-forward basis, UGI-GD will apply the DSIC rate to those customers. Thus OCA argues, “[T]his is consistent with Act 11’s requirement and the Commission’s Model Tariff, which provide that the DSIC ‘shall be applied to all customers classes.’ 66 Pa.C.S. § 1358(d)(1); *Final Implementation Order*, App. A at 8.”

Concerning the federal and state income tax deduction generated by a DSIC investment, OCA submits the following:

Because a final order in this proceeding will be entered after the effective date of Act 40, the OCA recommended that federal and state income tax deductions generated by DSIC investment should be reflected in UGI-GD’s DSIC calculations. As noted in the Settlement, the impact of Act 40 on the treatment of federal and state income tax deductions in the DSIC calculation has been raised in the FirstEnergy Companies’ consolidated DSIC proceeding at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931 and P-2015-2508948. Rather than litigate the issue again here, the Settlement provides that UGI-GD will follow the Commission’s directives regarding the effect of Act 40 on the DSIC calculation. The OCA submits that it is in the interest of all parties, the Commission and the public to reduce or avoid litigation of this legal question.

OCA St. in Support at 4-5.

For all of the above reasons, OCA submits the Settlement is in the public interest and is in the interest of the customers of UGI-GD. Therefore, OCA urges that the Commission should approve the Settlement.

3. UGIII's Position

UGIII in its support statement proffers that the Commission has a strong policy favoring settlements. "The Commission encourages parties to seek negotiated settlements of contested proceeding in lieu of incurring the time, expense and uncertainty of litigation." 52 Pa.Code § 69.391(a); *also see* 52 Pa.Code § 5.231. According to UGIII, the parties engaged in negotiations to resolve the issues raised in this proceeding. UGIII submits the Settlement is in the public interest for the following reasons:

- a. As a result of the [Settlement] Petition, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be less than they would have been if the proceeding had been fully litigated;
- b. Uncertainties regarding further expenses associated with possible appeals from a final order of the Commission regarding the issues in this Settlement are avoided as a result of the [Settlement] Petition; and
- c. The [Settlement] Petition reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding. Similarly, the [Settlement] Petition is presented without prejudice to any position any party may advance in future proceedings involving UGI-GD.

UGIII St. in Support at 3.

UGIII submits its issues are specifically addressed because the Settlement:

- a. Provides that UGI-GD may reduce or eliminate the DSIC Rider to any customer with competitive alternatives who is

paying flexed or discounted rates, and to any customer that has a negotiated contract with UGI-GD; and

- b. Excludes the following UGIII members from the DSIC upon the effective date of the DSIC tariff filing (i.e., January 1, 2017): (1) ArcelorMittal Steelton, LLC; (2) Carpenter Technology Corporation; (3) East Penn Manufacturing Company; and (4) Lehigh Heavy Forge Corporation. Additionally, these UGIII members will continue to be excluded from the DSIC as long as they meet the conditions for exemption under UGI-GD's gas tariff.

Id.

Thus, UGIII concludes the Settlement is in the public interest and adheres to Commission policies promoting negotiated settlement. Therefore, UGIII asserts the Commission should approve the Settlement Petition.

C. Recommendation

This case was assigned to the Office of Administrative Law Judge to address a single issue: “Whether or not customers receiving service under specific Rate Schedules should be exempt from the DSIC.” The Parties to this proceeding engaged in negotiations to resolve this issue. As a result, UGI-GD, OCA and UGIII achieved a settlement,¹ under which UGI-GD’s DSIC Rider will be applied to certain exempt customers. UGI-GD DSIC Rider provides that “the DSIC shall be applied equally to all customer classes, except that the Company may reduce or eliminate the Rider DSIC to any customers with competitive alternatives who are paying flexed or discounted rates and customers having negotiated contracts with the Company, if it is reasonable necessary to do so. *See* UGI Gas Tariff (filed December 22, 2016).

Pursuant to the UGI Tariff Gas – Pa. P.U.C. No. 6, Supplement 3, the Company agrees to exclude UGIII members ArcelorMittal Steelton, LLC, Carpenter Technology Corporation, East Penn Manufacturing Company, and Lehigh Heavy Forge Corporation, from the DSIC upon the effective date of the DSIC tariff filing (i.e., January 1, 2017).

¹ While they are not signatories to the Settlement Petition, I&E and OSBA do not oppose the Settlement.

These customers currently meet the tariff requirements for reduction or elimination of the DSIC. The aforementioned UGIII members will continue to be excluded from the DSIC as long as they meet the conditions for exemption under the UGI Gas Tariff.

Settlement Petition ¶22.

Settlement negotiations also addressed OCA's concern regarding the impact of Act 40, 66 Pa.C.S. § 1301.1, on the treatment of federal and state income tax deductions in calculating the DSIC charge. The Settlement Petition notes that this issue is currently before the Commission. *See Petition of Metropolitan Edison Co., et. al., for Approval of a DSIC*, Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948. *Id.* ¶22. Thus an agreement was reached under which UGI-GD, in subsequent proceedings, would follow Commission directives regarding whether to exclude or include Accumulated Deferred Income Taxes ("ADIT") and whether or not to adjust the state income tax rate to flow through state income tax deductions and credits in the DSIC calculation. *Id.*

Importantly, the Settlement avoids the expense of continuing and uncertain litigation. The Settlement preserves the Parties rights as to the position any of the Parties may advance in the future on the merits of the issues in further proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. *Id.* at 7. The Settlement also comports with the Commission's strong policy to encourage settlements 52 Pa.Code § 5.231(a).

Therefore, upon due consideration of the terms and conditions of the Settlement, including the supporting statements of the respective Settling Parties, I conclude that the Settlement constitutes a fair, just and reasonable resolution of the issue assigned by the Commission to the Office of Administrative Law Judge. As a result, I conclude that the Settlement is in the public interest, and in the ordering paragraphs below I will recommend that the Settlement be approved by the Commission without modification.

Also, I will recommend that the associated Formal Complaint of OCA filed at Docket No. C-2016-254745 be deemed satisfied.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§501, et seq.

2. In deciding whether the parties' settlement should be approved, the Commission must determine whether the settlement promotes the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 Pa. PUC 1, 22 (1985); *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

3. The settlement terms and conditions as contained in the Joint Petition for Settlement of All Issues at Docket No. P-2013-2398833 submitted by UGI Utilities, Inc. – Gas Division, the Office of Consumer Advocate and UGI Industrial Intervenors are just, reasonable and in the public interest.

4. The Joint Petition for Settlement of All Issues at Docket No. P-2013-2398833 submitted by UGI Utilities, Inc. – Gas Division, the Office of Consumer Advocate and UGI Industrial Intervenors should be approved as submitted, without modification.

5. The Formal Complaint of the Office of Consumer Advocate at Docket No. C-2016-2540745 should be deemed satisfied.

V. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of All Issues at Docket No. P-2013-2398833 submitted by UGI Utilities, Inc. – Gas Division, the Office of Consumer Advocate and UGI Industrial Intervenors is approved in its entirety and without modification.
2. That pursuant to the UGI Utilities, Inc.’s Tariff Gas – Pa. P.U.C. No. 6, Supplement 3, UGI Utilities, Inc., is permitted to exclude UGI Industrial Intervenors’ members, ArcelorMittal Steelton, LLC, Carpenter Technology Corporation, East Penn Manufacturing Company, and Lehigh Heavy Forge Corporation, from the Distribution System Improvement Charge (DSIC) as of the effective date of the DSIC tariff filing date which is January 1, 2017, and that these UGI Industrial Intervenors’ members will continue to be excluded from the DSIC as long as they meet the conditions for exemption under the UGI Utilities, Inc.’s Gas Tariff.
3. That UGI Utilities, Inc., will adopt tax treatment of Act 40 consistent with a final merits decision in *Petition of Metropolitan Edison Co., et. al., for Approval of a DSIC*, at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948
4. That the Formal Complaint of the Office of Consumer Advocate at Docket No. C-2016-2540745 is deemed satisfied.

5. That upon acceptance and approval by the Commission of the Settling Parties' Joint Petition for Settlement of All Issues and consistent with this Recommended Order the docket in this proceeding shall be marked closed.

Date: May 25, 2017

_____/s/
Conrad A. Johnson
Administrative Law Judge