



COMMONWEALTH OF PENNSYLVANIA

April 9, 2018

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: UGI 2018 Merger / Docket Nos. A-2018-3000381, A-2018-3000382, A-2018-3000383

Dear Secretary Chiavetta:

I am delivering for filing today my Protest and Petition to Intervene, along with our Verification, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Steven C. Gray".

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: The Honorable Charles E. Rainey, Jr.
Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of UGI Utilities, Inc.,	:	Docket No. A-2018-3000381
UGI Penn Natural Gas, Inc., and UGI	:	Docket No. A-2018-3000382
Central Penn Gas, Inc. for All of the	:	Docket No. A-2018-3000383
Necessary Authority, Approvals, and	:	
Certificates of Public Convenience for (1)	:	
an Agreement and Plan of Merger; (2) the	:	
Merger of UGI Penn Natural Gas, Inc. and	:	
UGI Central Penn Gas, Inc. into UGI	:	
Utilities, Inc.; (3) the initiation by UGI	:	
Utilities, Inc. of natural gas service in all	:	
territory in this Commonwealth where	:	
UGI Penn Natural Gas, Inc. and UGI	:	
Central Penn Gas do or may provide	:	
natural gas service; (4) the abandonment	:	
by UGI Penn Natural Gas, Inc. of all	:	
natural gas service in this Commonwealth;	:	
(5) the abandonment by UGI Central Penn	:	
Gas, Inc. of all natural gas service in this	:	
Commonwealth; (6) the adoption by UGI	:	
Utilities, Inc. of UGI Penn Natural Gas,	:	
Inc.'s and UGI Central Penn Gas, Inc.'s	:	
Existing Tariffs and their Application	:	
within New Service and Rate Districts of	:	
UGI Utilities, Inc. Corresponding to their	:	
Existing Service Territories as UGI North	:	
and UGI Central, Respectively; (7) the	:	
adoption by UGI Utilities of its Existing	:	
Tariff to be applied to a new UGI South	:	
Service and Rate District; (8) Where	:	
Necessary, Associated Affiliated Interest	:	
Agreements; and (9) any Other Approvals	:	
Necessary to Complete the Contemplated	:	
Transaction	:	

**NOTICE OF INTERVENTION AND PROTEST
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate (“OSBA”) files this Notice of Intervention and Protest with respect to the above-captioned Joint Application (“*Joint Application*”) pursuant to Sections 5.51(a)

and 5.71(a)(1) of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code §§ 5.51(a) and 5.71(a)(1). In support of this Notice of Intervention and Protest, the OSBA avers as follows: .

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission.

2. Representing the OSBA in this proceeding is:

Steven Gray
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, Pennsylvania 17101
(717) 783-2525
(717) 783-2831 (fax)
sgray@pa.gov

3. The *Joint Application* was filed by UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. (the “UGI Companies”) on March 8, 2018. The *Joint Application* proposes a “plan of merger” whereby UGI Penn Natural Gas, Inc. (“UGI PNG”) and UGI Central Penn Gas, Inc. (“UGI CPG”) would be merged into UGI Utilities, Inc. (“UGI Utilities”). *Joint Application*, Paragraph 1.

4. The UGI Companies are Commission-certificated operating public utilities and provide service to various classes of customers in designated service territories within Pennsylvania. *See Joint Application*, at Paragraphs 9, 11, 17, 18, 24, and 25.

5. Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. § 1102(a)(3).

6. When a certificate of public convenience is required under Section 1102, Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), allows the Commission to issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed acquisition would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”

7. The *Joint Application* raises a variety of issues that may require the Commission to reject the *Joint Application*, or to approve it only after imposing strict conditions.

8. For example, the *Joint Application* indicates that the three new divisions (UGI North, Central, and South) will continue to make separate filings for PGC, EE&C, Universal Service, GET Gas, LUFG, PoR (UGI South only), Choice rules, LTIP, DSIC and STAS. *Joint Application*, at Paragraph 40. Since triple filings will continue to be required, the merger will result in no administrative savings with respect to any of these processes.

9. Furthermore, the *Joint Application* adds the qualification “pending the Commission’s approval of further consolidation in future proceedings . . .” *Joint Application* at Paragraph 40. The *Joint Application* does not propose any plan for a future consolidation. The Companies, no doubt, would interpret Commission approval of *this* merger as implicit support for further consolidation. Therefore, the Companies should explicitly state their long-term strategy, particularly since that long-term strategy is integral to many of the *Joint Application’s* claimed benefits.

10. The *Joint Application* indicates that the Companies will continue to file separate LTIPs, as well as a consolidated LTIP. *Joint Application*, at Paragraph 42. It is unclear what the purpose of the consolidated LTIP is, although it could be inferred that the objective is to provide greater flexibility to assign capital spending among the various operational areas. Regardless, as set forth above, the Companies need to provide the details of their long-term strategy.

11. The *Joint Application* claims argument that the three divisions will not be separate companies, will therefore not be “affiliates,” and will not need affiliated interest agreements. *Joint Application*, at Paragraph 58. This legal assertion is unconvincing. In fact, the Commission may be tasked with additional tasks when trying to monitor the inter-divisional transactions carried on by the newly merged entity, as a necessary component of setting rates for each separate division.

12. The *Joint Application* implies that there are significant economic benefits to be gained from a uniform rate structure, which the newly merged entity would propose in the future. Regardless of the accuracy of that implication, the *Joint Application* has not proposed a uniform rate structure, and therefore such a structure is not a benefit available in this *Joint Application*. Moreover, harmonization of three sets of tariffs will be disruptive and complicated, and the *Joint Application* makes no effort to address those complexities. The OSBA respectfully observes that assuming that these problems will be

resolved in the future is not reasonable. Simply put, such “end-state” benefits for achieving full consolidation of the three entities cannot be attributed to this *Joint Application*.

WHEREFORE, the OSBA respectfully requests that the Commission reject the *Joint Application* as filed.

In the alternative, the OSBA respectfully requests that the Commission conduct a full investigation, including evidentiary hearings, into the *Joint Application*.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate
Attorney I.D. No. 77538

For: **John R. Evans**
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Date: April 9, 2018

VERIFICATION

I, John R. Evans, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: April 9, 2018



(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Utilities, Inc.; (3) the initiation by UGI	:	
Utilities, Inc. of natural gas service in all	:	
territory in this Commonwealth where	:	
UGI Penn Natural Gas, Inc. and UGI	:	
Central Penn Gas do or may provide	:	
natural gas service; (4) the abandonment	:	
by UGI Penn Natural Gas, Inc. of all	:	
natural gas service in this Commonwealth;	:	
(5) the abandonment by UGI Central Penn	:	
Gas, Inc. of all natural gas service in this	:	
Commonwealth; (6) the adoption by UGI	:	
Utilities, Inc. of UGI Penn Natural Gas,	:	
Inc.'s and UGI Central Penn Gas, Inc.'s	:	
Existing Tariffs and their Application	:	
within New Service and Rate Districts of	:	
UGI Utilities, Inc. Corresponding to their	:	
Existing Service Territories as UGI North	:	
and UGI Central, Respectively; (7) the	:	
adoption by UGI Utilities of its Existing	:	
Tariff to be applied to a new UGI South	:	
Service and Rate District; (8) Where	:	
Necessary, Associated Affiliated Interest	:	
Agreements; and (9) any Other Approvals	:	
Necessary to Complete the Contemplated	:	
Transaction	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Charles E. Rainey Jr.
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
crainey@pa.gov
(Email and Hand Delivery)

Tanya J. McCloskey, Esquire
Acting Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
tmccloskey@paoca.org
(Counsel for OCA)
(Email and Hand Delivery)

Richard Kanaskie, Esquire
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
rkanaskie@pa.gov
(Counsel for BIE)
(Email and Hand Delivery)


Paul Diskin, Director
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
pdiskin@pa.gov
(Email and Hand Delivery)

Kent D. Murphy, Esquire
Mark C. Morrow, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
murphyke@ugicorp.com
morrowm@ugicorp.com
(Counsel for UGI)

David B. MacGregor, Esquire
Garrett P. Lent, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
dmacgregor@postschell.com
glent@postschell.com
(Counsel for UGI)

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
(Counsel for NGS Parties)

DATE: April 9, 2018



Steven C. Gray
Assistant Small Business Advocate
Attorney I.D. No. 77538