



COMMONWEALTH OF PENNSYLVANIA

July 20, 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:

Enclosed please find the Statement in Support of the Joint Petition for Approval of Settlement of All Issues, 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,


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

Enclosures

cc: 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	:	

**STATEMENT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT OF ALL ISSUES**

Introduction

UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. (collectively, the “UGI Companies”) filed the above-captioned Joint Application (“*Joint Application*”) 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” or the “Company”).

The Small Business Advocate is authorized and directed to represent the interests of the small business consumers of utility services in the Commonwealth of Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. Pursuant to that statutory authority, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Protest in response to the *Joint Application* on April 9, 2018.

The OSBA actively participated in the negotiations that led to the proposed settlement and is a signatory to the Joint Petition for Approval of Settlement of All Issues (“*Settlement*”). The OSBA submits this statement in support of the *Settlement*.

The Settlement

The *Settlement* sets forth a list of issues that were resolved through the negotiation process. The following issues were of particular significance to the OSBA when it concluded that the *Settlement* was in the best interests of UGI Companies' small business customers.

1. Legal Standard for Approving the *Settlement*

Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility, such as UGI Utilities, 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). The merger proposed by the *Joint Application* falls squarely under Section 1102(a)(3). 52 Pa. Code Section 69.901(b)(1).

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), the Commission may 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 transaction 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.”

Popowsky v. Pa. P.U.C., 594 Pa. 583, 937 A.2d 1040 (2007), is relevant precedent with respect to the affirmative public benefit standard. The Pennsylvania Supreme Court stated the following, when addressing the issue of affirmative public benefits in a telecommunications merger proceeding between Verizon Communications, Inc. and MCI, Inc.:

In summary, as indicated in *City of York*, the appropriate legal framework requires a reviewing court to determine whether **substantial evidence** supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky, 937 A.2d at 1057 (emphasis added).

The Supreme Court found evidence of affirmative public benefits in the proposed merger between Verizon and MCI:

Indeed, even from a lay perspective, bearing in mind today's technological advances affecting all segments of business and personal life, there is much force to the Commission's conclusion that a combination of Verizon's and MCI's assets and strengths has substantial potential to create an integrated infrastructure supporting delivery of innovative, high-speed data and video services via the fiber-optic network, as well as deployment of mobile devices freeing workers from fixed workstations.

Popowsky, 937 A.2d at 1058.

Although the Supreme Court permitted predictive benefits, it does not follow that the *City of York* standard is easily met. Verizon and MCI both brought tangible assets to the table, which

even a “lay perspective” could see the benefits of when those tangible assets were combined. The benefits were not purely speculative.

As set forth below, the OSBA respectfully submits that the *Settlement* satisfies the *City of York* legal standard.

2. Affirmative Public Benefits

OSBA witness Robert D. Knecht agreed that the *Joint Application* would result in affirmative public benefits:

I conclude that there are significant administrative and regulatory efficiencies associated with consolidating the regulatory filings, cost accounting and tax filings from merging three regulated utility companies into one.

OSBA Statement No. 1, at 5.

The OSBA observes that from a litigation, administrative, and cost standpoint, having one filing instead of three will likely provide a benefit to this office, in the form of reduced legal time, administrative processing and expert witness costs.

Mr. Knecht addressed the benefits to the Company’s ratepayers, as follows:

As proposed, the benefits will generally not flow to ratepayers until the next base rates case for the combined NGDC. At that time, the cost savings associated with administrative efficiencies will presumably be reflected in test year costs being lower than they otherwise would. Since base rates proceedings are not generally submitted unless a rate increase is required, the benefit to ratepayers will presumably take the form of a lower rate increase than would otherwise apply.

OSBA Statement No. 1, at 6.

The *Settlement* both anticipates a post-merger consolidated base rates proceeding, and places requirements upon that base rates filing. *Settlement*, Paragraph 7. Thus, the *Settlement*

provides administrative affirmative public benefits in this proceeding, and anticipates future, additional affirmative public benefits in the post-merger consolidated base rates proceeding.

Therefore, the OSBA respectfully submits that the *Settlement* satisfies the City of York legal standard, and requests that the ALJs and the Commission approve the *Settlement* in its entirety.

3. Post-Merger Consolidated Base Rates Filing

In considering affirmative public benefits, however, it is important to recognize that much of the benefits claimed by the UGI Companies in this proceeding are achieved only through the full harmonization of rates and the elimination of separate accounting for the three rate districts. Mr. Knecht testified, as follows:

Moreover, it is important to recognize that a large share of the administrative cost savings and other efficiencies can only be achieved if the combined company would no longer need to track all of its costs separately for each entity, and would be able to phase out the multiple duplicative regulatory filings that it must currently undertake.

OSBA Statement No. 1, at 6.

Although it is not entirely clear in the *Joint Application*, it is the UGI Companies' clear intent to discontinue any segregation of rates between rate districts on the basis of cost, and will maintain separate rates only as long as doing so is necessary in order to satisfy the principles of rate gradualism. OSBA Statement No. 1, at 7-8. As Mr. Knecht testified:

But make no mistake about it – approving the merger as proposed will necessarily mean that rates for the three divisions will be harmonized, since no cost basis will continue to exist by which differentials could be derived. After this proceeding, there will be no opportunity for a party to appear before the Commission and argue, for example, that the operating costs at PNG (UGI North) justify lower rates than for CPG (UGI Central).

OSBA Statement No. 1, at 8 (footnote omitted).

Furthermore, Mr. Knecht testified about the potential problems consolidating the rates of the three gas companies, as follows:

At present, a variety of different rates for the separate operating divisions are set based on the specific costs for each division.

These differences are less severe than they might be, in that the Applicants have been in the process of harmonizing rate class definitions and class eligibility requirements over the past ten years, such that consolidation would generally not involve forcing customers to change rate classes.

However, there are still a variety of different cost-based tariff charges, including (but probably not limited to) base distribution rates, purchased gas cost ('PGC') rates, distribution system improvement charges ("DSICS"), gas procurement charges ('GPCs'), merchant function charges ('MFCs'), energy efficiency and conservation ('EEC') riders (UGI Gas and PNG only), gas delivery enhancement ('GDE') riders, and purchase of receivables discounts (UGI Gas only).

Each of these tariff charges reflects the specific costs for the individual operating entity, as well as other rate design considerations specific to each.

If the combined NGDC moves quickly to consolidated cost accounting, there will no longer be cost bases for differentiating these rates.

Thus, the Applicants propose that the rates for the three companies be harmonized, with the only restriction being that such harmonizing may need to be phased in over time in order to avoid undue rate changes for any particular customer class or customer.

OSBA Statement No. 1, at 7-8 (formatting added).

The *Settlement* addresses the issues raised by Mr. Knecht. Specifically, the *Settlement* states, as follows:

5. In addition to the consolidated books of account provided in Paragraph No. 4, above, UGI shall maintain separate books of account by rate division until the next base rate case, or, if later, until UGI places into service the new financial system that is currently under development.

* * *

7. In its first base rate case post-merger, UGI Gas Division will file separate revenue requirement models and cost allocation studies on a consistent basis for each rate district, and will be permitted to file a consolidated revenue requirement model and class cost of service study, which will be subject to the following requirements:

(a) UGI will submit detailed sales and revenue schedules for each rate class within each rate district that show the following: (1) actual historic year sales and revenues; (2) adjusted historic year sales and revenues along with specific historic year ratemaking adjustments individually identified as to amount and purpose (adjusted historic year); (3) future year budgeted sales and revenues along with specific ratemaking adjustments identified as to amount and purpose (adjusted future year); and, (4) fully projected future year ("FPFTY") budgeted sales and revenues along with specific FPFTY ratemaking adjustments individually identified as to amount and purpose (adjusted FPFTY).

Settlement, Paragraphs 5, 7.

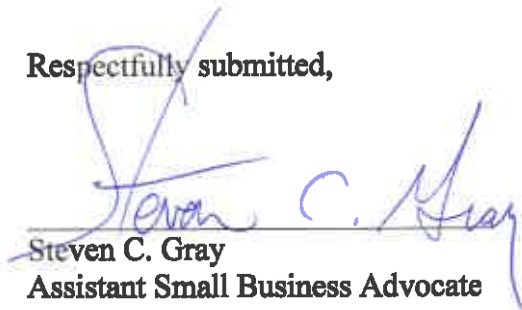
Therefore, with the Company maintaining separate books of account through the next base rates case, providing separate cost allocation studies, and submitting detailed schedules in its post-merger base rates filing, all parties will have sufficient data and detail to address the cost implications of the consolidation of customer rates.

The OSBA therefore supports this proposal as set forth in the *Settlement*.

Conclusion

For the reasons set forth in the *Settlement*, as well as the additional factors that are enumerated in this statement, the OSBA supports the proposed *Settlement* and respectfully requests that the ALJ and the Commission approve the *Settlement* in its entirety.

Respectfully submitted,



Steven C. Gray
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Attorney ID No. 77538

Office of Small Business Advocate
300 North Second Street, Suite 202
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Dated: July 20, 2018

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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	:	
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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).

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DATE: July 20, 2018

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