

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of UGI Utilities, Inc., UGI Penn	:	
Natural Gas, Inc. and UGI Central Penn Gas, Inc.	:	
for all of the 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	:	A-2018-3000381
natural gas service in all territory in this Commonwealth	:	
where UGI Penn Natural Gas, Inc. and UGI Central Penn	:	
Gas, Inc. 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	:	A-2018-3000382
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	:	A-2018-3000383
by UGI Utilities, Inc. 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	:	

RECOMMENDED DECISION

Before
Benjamin J. Myers
Administrative Law Judge

and

Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision recommends that the joint petition for settlement be approved in its entirety without modification because it is in the public interest. This decision finds that the settlement complies with the relevant sections of the Public Utility Code regarding mergers and is consistent with Commission regulations promoting settlements.

HISTORY OF THE PROCEEDING

On March 8, 2018, UGI Utilities, Inc. – Gas Division, UGI Central Penn Gas, Inc., and UGI Penn Natural Gas, Inc. (UGI or Joint Applicants) filed a merger application with the Pennsylvania Public Utilities Commission (Commission). This application sought the authorization for: (1) an agreement and plan of merger; (2) the merger of UGI Penn Natural Gas, Inc. (PNG) and UGI Central Penn Gas, Inc. (CPG) with and into UGI Utilities, Inc.; (3) the initiation by UGI Utilities, Inc. of natural gas service in all territory in this Commonwealth where PNG and CPG do or may provide natural gas service; (4) the abandonment by PNG of all natural gas service in this Commonwealth; (5) the abandonment by CPG of all natural gas service in this Commonwealth; (6) adoption by UGI Utilities, Inc. of PNG's and CPG'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, Inc. of its existing tariff to be applied to a new UGI South Service and Rate District; and (8) to the extent necessary, associated affiliated interest agreements. UGI further sought all other approvals and certificates appropriate, customary, or necessary under the Public Utility Code to carry out the transactions contemplated in the merger application in a lawful manner. UGI requested that the Commission grant these authorizations by no later than August 23, 2018, so that the merger may close and become effective October 1, 2018, the beginning of UGI Utilities, Inc.'s fiscal year.

Notice of this application was published by the Commission in the *Pennsylvania Bulletin* on March 24, 2018 at 48 Pa.B 1797-98 (2018) and by UGI in various newspapers of general circulation on March 27, 2018. The notice stated that the deadline for filing protests and petitions to intervene was April 9, 2018.

On April 3, 2018, a Petition to Intervene was filed by Shipley Choice, LLC, Dominion Retail, Inc., Interstate Gas Supply, Inc. d/b/a IGS Energy and Rhoads Energy (NGS Parties).

On April 9, 2018, a Petition to Intervene was filed by Direct Energy Business, LLC, Direct Energy Services, LLC and Direct Energy Business Marketing, LLC (Direct Energy).

On April 9, 2018, a Petition to Intervene was filed by the UGI Industrial Intervenors (UGIII).

On April 9, 2018, a Protest, Petition to Intervene and Verification was filed by the Office of Small Business Advocate (OSBA).

On April 9, 2018, a Protest and Public Statement was filed by the Office of Consumer Advocate (OCA).

On April 10, 2018, a Petition to Intervene was filed by the Commission on Economic Opportunity (CEO).

On April 11, 2018, a Notice of Appearance was filed by the Commission's Bureau of Investigation and Enforcement (I&E).

A prehearing conference was scheduled for May 14, 2018. Prior to this conference, the parties submitted prehearing memoranda addressing various issues relating to the litigation of this matter. The prehearing conference was conducted as scheduled on May 14, 2018. The petitions to intervene filed by the respective parties were granted without objection at the time of the prehearing conference. A litigation schedule and modified discovery rules were agreed to by the parties at that time and were adopted in the scheduling order issued on May 15, 2018. Evidentiary hearings in this matter were scheduled for August 21 – 22, 2018.

On June 5, 2018, UGI filed a motion for a protective order. There were no objections raised by any of the parties regarding this motion. On June 8, 2018, an order granting this motion was issued.

Pursuant to the established litigation schedule, the parties filed the following direct testimony:

- On June 1, 2018, UGI served the direct testimony of Paul J. Szykman.
- On July 10, 2018, OSBA served the direct testimony of Robert D. Knecht; CEO served the direct testimony of Eugene M. Brady; the NGS Parties served the direct testimony of James L. Crist and OCA served the direct testimony of Jerome D. Mierzwa.

Also on July 10, 2018, UGIII and I&E indicated that they would not be filing any direct testimony in this matter.

On July 20, 2018, UGI filed a joint petition for settlement seeking the approval of settlement of all issues. This petition indicated that UGI, I&E, the OCA, the OSBA, the NGS Parties, CEO and Direct Energy (Joint Petitioners), were requesting the Commission to approve the proposals set forth in UGI's application requesting all necessary authority, approvals and certificates of public convenience from the Commission pursuant to Sections 1102(a)(1)-(3), 2102(a) and 2210 of the Public Utility Code (Merger Application), subject to the terms and conditions of the settlement which had been reached by the parties. In addition, the Joint Petitioners indicated that this settlement represented a full settlement of all issues and concerns raised by the respective parties in this matter and that while UGIII did not join in the settlement, it had authorized the Joint Petitioners to convey that it did not object to the settlement.¹ The settlement which had been reached was unanimous and resolved all issues relating to the Merger Application.

¹ UGIII has not raised any objections to the proposed settlement and did not file a statement in support of the joint petition for approval of the settlement. No additional references to UGIII will be necessary for the purposes of this disposition.

Between July 20 and July 25, 2018, each of the respective parties filed statements in support of this settlement. Each of the statements in support argued that the terms and conditions of the settlement, and UGI's merger application as a whole, would ensure that the merger would affirmatively promote the service, accommodation, convenience or safety of the public. The parties unanimously requested that the settlement be approved in its entirety without modification.

On August 14, 2018, the parties filed a joint motion for admission of written testimony by stipulation. This motion requested that the pre-served written direct testimony filed by the respective parties be admitted to the record. This motion provided the following:

1. The Parties hereby stipulate to the identification and admissibility of the following pre-served written direct testimony and associated exhibits by the Joint Applicants:

- (a) UGI Statement No. 1 – Direct Testimony of Paul J. Szykman;
- (b) UGI Exhibit PJS-1 – Resume of Paul J. Szykman;
- (c) UGI Exhibit PJS-2 – Merger Application and Appendices;
and
- (d) Verification of Paul J. Szykman.

2. The aforementioned statement and exhibits offered by the Joint Applicants are attached hereto as **Appendix A**.

3. The parties hereby stipulate to the identification and admissibility of the following pre-served written direct testimony and associated exhibits by the OCA:

- (a) OCA Statement No. 1 – Direct Testimony of Jerome D. Mierzwa; and
- (b) Verification of Jerome D. Mierzwa.

4. The aforementioned statement offered by the OCA is attached hereto as **Appendix B**.

5. The parties hereby stipulate to the identification and admissibility of the following pre-served written direct testimony and associated exhibits by the OSBA:

- (a) OSBA Statement No. 1 – Direct Testimony of Robert D. Knecht;

- (b) Exhibit IEc-1 – Resume and Expert Testimony List for Robert D. Knecht;
- (c) Exhibit IEc-2 – RDK Workpapers for Proof of Revenue and Unit Cost Analysis;
- (d) Exhibit IEc-3 – Referenced Interrogatory Responses; and
- (e) Verification of Robert D. Knecht.

6. The aforementioned statement and exhibits offered by the OSBA are attached hereto as **Appendix C**.

7. The parties hereby stipulate to the identification and admissibility of the following pre-served written direct testimony by the NGS Parties:

- (a) NGS Parties’ Statement No. 1 – Direct Testimony of James L. Crist; and
- (b) Verification of James L. Crist.

8. The aforementioned statement offered by the NGS Parties is attached hereto as **Appendix D**.

9. The parties hereby stipulate to the identification and admissibility of the following pre-served written direct testimony by the CEO:

- (a) CEO Statement No. 1 – Direct Testimony of Eugene M. Brady; and
- (b) Verification of Eugene M. Brady.

10. The aforementioned statement offered by CEO is attached hereto as **Appendix E**.

11. Having stipulated to the identification and admissibility of the above-described pieces of testimony and associated exhibits, the Parties respectfully request that the ALJs admit the testimony and exhibits attached hereto in **Appendices A through E** into the record of this proceeding.

Id. at ¶¶ 10-20 (emphasis in original). The motion requested that the attached testimony and exhibits be admitted into the record by stipulation and motion. The parties also asked that the evidentiary hearings scheduled from August 21-22, 2018, be cancelled as they were no longer necessary.

The August 21-22, 2018 hearings were cancelled as requested by the parties. The testimony and exhibits referenced in the above motion will be admitted into the record by

stipulation and the motion raised by the parties requesting same will be granted as part of this Recommended Decision. The parties will be directed to provide the requisite copies of all material admitted in the stipulation to the Commission's Secretary's Bureau. For the reasons set forth below, the settlement will be recommended for approval in its entirety without modification.

DISCUSSION

Settlement Terms

In the settlement, the parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the settlement are as follows, with the original paragraph numbering provided in the settlement:

A. GENERAL

1. The Parties agree that CPG and PNG will be permitted to merge with and into UGI Utilities, Inc., as described in the Application, subject to the conditions set forth in the following paragraphs.

2. Upon close of the merger, UGI Utilities, Inc. ("UGI") will rename the currently effective tariffs of CPG, PNG and UGI Gas as the tariffs of the UGI Central, UGI North, and UGI South rate districts, respectively, of the new UGI Utilities, Inc. – Gas Division ("UGI Gas Division") and make other necessary conforming changes.

B. TRANSPARENCY OF DATA/RATEMAKING

3. UGI will maintain pre-merger accounting records for old UGI Gas Division, CPG, and PNG, at least until uniform rates are established for the new UGI Gas Division and otherwise in accordance with applicable record retention legal requirements.

4. Upon close of the merger, UGI will be permitted to implement consolidated cost accounting for the consolidated UGI Gas Division, for book and regulatory purposes, without attribution to rate district, provided that, until such time as UGI has permission to implement uniform rates throughout the UGI Gas service territory, UGI Gas will maintain: (1) customer revenue data

and usage records by rate district; and (2) separate (by rate district) cost records for costs recovered outside of base rates—e.g., purchased gas costs (“PGC”), distribution system improvement charges (“DSIC”), Universal Service Program (“USP”) Rider, State Tax Adjustment Surcharges (“STAS”), etc.).

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.

6. UGI will maintain the capacity to file, and will file, the reports and other filings identified in paragraph 40 to the Merger Application on a rate district by rate district basis until the earlier of such time as UGI has achieved uniform rates among the rate districts or such time as the Commission otherwise approves.

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).

(b) UGI shall be permitted to include a proposal to create uniform rates for the three UGI Gas rate districts, inclusive of base rates, PGC rates, and other surcharges, which shall not be opposed on the basis that such proposal should be made in a PGC rate or other type of proceeding.

(c) All parties reserve their right to take positions on revenue requirement, cost of service, rate structure, rate design, or other relevant ratemaking issues.

8. The consolidated UGI Gas Division will be permitted to file a single Chapter 71 Financial Earnings report each quarter it is required to file one, which will consolidate the financial information applicable to the UGI North, UGI Central and UGI South rate districts.

9. The consolidated UGI Gas Division will be permitted to file a single PUC Annual Report in accordance with 52 Pa. Code Section 59.48, which will consolidate the financial information applicable to the UGI North, UGI Central and UGI South rate districts.

10. Except as provided in Paragraph No. 6 above, UGI Gas Division will be permitted to consolidate all other PUC reports applicable to gas utilities on a consolidated UGI Gas Division basis.

11. UGI will continue to maintain appropriate cost allocation procedures to allocate or directly assign costs between the Gas Division and the Electric Division, subject to review by the Commission either as part of an audit or in the context of a base rate proceeding.

C. LOW INCOME PROGRAMS

12. UGI Gas Division will maintain the existing Universal Services programs in the UGI North, UGI Central, and UGI South rate districts after the merger, subject to the Commission's regulation and authorization, at least through the term of the currently effective Triennial Plan.

13. UGI's future Universal Services Triennial plans will continue to recognize the geographic diversity of the UGI Gas Division service territory by maintaining existing or designing new programs for the purpose of encouraging program enrollment. Notice of the filing of future Triennial Plans will be provided to the parties of record in this proceeding and their counsel.

14. To track Universal Services program participation geographically, UGI will maintain records of customers enrolled in the Customer Assistance Program, customers who received Low-Income Usage Reduction Program ("LIURP") treatment, and other universal service benefits, on a county-by-county basis. For comparison purposes, UGI will establish a baseline of such county level participation for the fiscal year ending September 30, 2018.

15. UGI will use community-based organizations (“CBOs”) for the purposes of its universal service programs in materially the same manner and in materially the same locales as UGI utilized CBOs prior to the merger, subject to continued Commission oversight and approval, and CBO performance.

**D. GAS CHOICE AND NON-CHOICE
TRANSPORTATION**

16. On or before September 30, 2018, UGI, the NGS Parties and other interested parties will meet and initiate the collaborative process for the purpose of developing an initial strawman uniform gas choice and non-choice transportation programs proposal. The following issues will be addressed:

(a) Establishing uniformity of rules in each of the consolidated UGI Gas Division rate districts governing choice and, separately, non-choice transportation programs.

(b) Scheduled delivery confirmation process and communication.

(c) Imbalance Cash-out provisions.

(d) Cost recovery associated with program rule changes and additional facilities or equipment, including but not limited to recovery of the costs of information system modification necessitated by the program changes.

17. In conjunction with the collaborative process provided in Paragraph No. 16., above, no later than February 28, 2019 or such later date as the parties to the collaborative may agree, either as part of a base rate proceeding or as a limited purpose tariff filing before the Commission, UGI shall propose uniform rules governing the gas choice and non-gas choice transportation programs throughout the UGI Gas service territory. As part of the filing, UGI will state whether all parties to the collaborative process concur with the filing and shall serve a copy of the filing on each participant in the collaborative process. To the extent that parties do not agree with any provisions, those parties shall retain all rights to challenge the tariff filing.

18. UGI will support the filing of a license amendment or a petition for declaratory ruling, filed by one or more Natural Gas Suppliers (“NGS”) licensed to provide competitive retail natural gas supply services in one or more of UGI Gas, UGI CPG, and UGI PNG service territories in existence prior to the merger, to extend the scope of their existing licenses into the entire UGI

service territory post-merger, to the extent that such filing is limited in scope to the geographic scope of a NGS license on the UGI Gas system.

19. By no later than October 30, 2018, UGI shall propose, as part of one or more limited purpose tariff filing(s):

(a) To modify the financial surety requirements applicable to Natural Gas Suppliers on the consolidated UGI Gas distribution system to reflect 1) a minimum surety level of \$50,000; or 2) if higher, the sum of the surety level requirements calculated on a customer basis in accordance with the Gas Choice Supplier Tariffs of the UGI North, UGI South and UGI Central rate districts.

(b) To expand the pre-merger UGI Gas Purchase of Receivable program to the UGI Central and UGI North rate districts.

20. UGI commits to implementing any order issued by the Commission at Dockets L-2016-2577413 (accelerated NGS switching) and L-2017-2619223 (capacity assignment), that require NGDCs to switch customers more rapidly than is done presently, within the time frames established in those proceedings.

E. AFFILIATE INTEREST ISSUES

21. All currently effective affiliate interest arrangements between UGI and affiliates will remain effective, except those agreements that are based on CPG and PNG being separate corporate entities will be terminated effective upon closing of the merger.

Settlement at 4-9.

In addition, the settlement contains the usual conditions found in most settlements submitted to the Commission. For example, if the Commission modifies the settlement, any party may elect to withdraw from the settlement and proceed with litigation and, in such event, the settlement shall be void and of no effect. The settlement is also made without admission against, or prejudice to, any position that any party may adopt in the event of any subsequent litigation. The parties have also agreed to waive their right to file exceptions if the settlement is recommended for adoption without modification.

Legal Standard

Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility, such as UGI, 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 application falls under Section 1102(a)(3).

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. Pa. Pub. Util. Comm’n, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (City of York); *see also*, Popowsky v. Pa. Pub. Util. Comm’n, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (when addressing the issue of affirmative public benefits “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 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.” 66 Pa. C.S. § 1103(a).

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103 (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id.; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm’n v. MXenergy Electric Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

Public Interest - Analysis of the Settlement

As noted above, it is the policy of the Commission to promote settlements. 52 Pa. Code § 5.231(a). The benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See*, Lancaster, Warner, *supra*. As discussed further below, the parties submitted statements in support of the settlement, articulating their individual arguments and reasons why approving the settlement without modification is appropriate and in the public interest. The parties noted that the settlement is in the public interest because it was achieved after various forms of discovery, service of written testimony and numerous settlement negotiations between the parties. The parties also noted that the settlement is in the public interest because approving the settlement would not only avoid the time, expense and uncertainty for the parties and the Commission that would occur if the case was fully litigated, but it also provided tangible benefits to the utilities as well as their customers. The parties further stated that the settlement terms constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed therein and that the

settlement is consistent with Commission rules, regulations and procedures encouraging and promoting negotiated settlements.

Statements in Support

Each of the parties joining in the petition for settlement filed statements in support of that settlement. While each party generally argued that the settlement as a whole lies squarely within the public interest, the parties also address individual settlement paragraphs. The statements in support of the settlement, and the arguments of the parties that the settlement is in the public interest will be outlined below.

Public Interest - Generally

UGI stated that the proposed merger, as conditioned by the settlement, would produce substantial affirmative public benefits immediately upon closing and additional benefits in the future. UGI explained in the Merger Application and testimony, that the proposed merger will provide substantial administrative, operational, capital and regulatory efficiency benefits. (Exhibit PJS-2, Merger Application ¶¶ 66-84; UGI St. No. 1, pp. 16-27). These efficiencies would result from the consolidation of certain business functions. These business functions, currently performed in duplicate or triplicate by multiple companies, would be performed by a single company after the merger.

Upon the close of the merger, UGI would rename the currently effective tariffs of CPG, PNG and UGI Gas as the tariffs of the UGI Central, UGI North, and UGI South rate districts, respectively, of the new UGI Gas Division and make other necessary conforming changes. Importantly, as noted in the Merger Application, the proposed merger would not involve the merger of unrelated, and unaffiliated utilities; but instead involve the consolidation of three, affiliated natural gas distribution companies whose operation and management have become increasingly integrated over time.

In addition, the Joint Applicants asserted that the merger of CPG and PNG, with and into UGI would provide significant public benefits. As explained in the Merger Application

and the Joint Applicants' testimony, UGI Gas, PNG, and CPG have been operating under one corporate umbrella since 2006 for PNG and 2008 for CPG, when PNG and CPG were acquired by UGI. (UGI St. No. 1, p. 17). During that time, major strides had been taken to combine the operations and administration of these separate natural gas utilities. Those efforts included the UGI-1 Initiative, which is a company-wide management effectiveness initiative focusing on people, tools and processes. UGI-1 includes a number of fundamental improvement efforts. The long-term goal of UGI-1 is to place all of the Joint Applicants' operations on a common set of information systems, tools, equipment, and uniform work management and performance platforms.

UGI believes that the proposed merger of these three utility companies into one company is fully consistent with the long-term goal of single company operation and the efficiencies that would be obtained therefrom. The proposed merger of UGI, PNG, and CPG into one natural gas distribution company would more formally reflect and incorporate the ongoing actual operations of these companies. (Merger Application ¶ 68; *see also* UGI St. No. 1, pp. 11-16). The result of the proposed merger is that the corporate form of UGI would follow the substance of their increasing integrated operations. For those and other reasons, UGI requested that pursuant to Section 1102(a)(3) of the Public Utility Code, the Commission approve the merger of CPG and PNG with and into UGI, and that the Commission issue an appropriate certificate of public convenience authorizing the same.

The NGS Parties filed a statement in support of the settlement and indicated that the terms of the settlement addressed many of the concerns the NGS Parties had with the proposed merger and would improve the service provided to UGI customers. The settlement did this in various ways, not the least of which is by allowing customers to enjoy the same services – including a purchase of receivables program (POR) which was a very important pre-condition for many NGSs to enter a natural gas distribution company (NGDC) service territory and improved budget billing, with the elimination of the "true-up" payment for customers who switch suppliers — across all three service territories. NGS Parties further indicated that while it could be said that UGI would have eventually expanded the POR program to the other two divisions, the agreement to do so on an expedited basis is a win for customers and the NGSs that will now be able to better serve them.

Likewise, the NGS Parties noted, among other things, that UGI had agreed to convene a collaborative with a goal of harmonizing and optimizing its tariffs across all three UGI entities. From a supplier perspective that was important because they would otherwise at times face what are vastly different rules between the three UGI affiliates. Unified tariffs would mean simplified operation in the UGI service territories and less opportunity for errors, which translates into lower overhead for suppliers and UGI. The NGS Parties further argued that the collaborative would also address improvements to UGI's current tariffs, that were in line with concerns raised by the NGS Parties, including improved communications, a delivery confirmation process and revisions to the cash out protocols. The NGS Parties believe that the settlement is in the public interest and asked that it be approved as presented.

Direct Energy filed a brief statement in support of the settlement and outlined the reasons for its concerns with the proposed merger and subsequent intervention. Those concerns however had been addressed via the terms of the proposed settlement and Direct Energy indicated that the settlement established uniform rules. Specifically, Direct Energy noted that UGI had agreed to initiate a collaborative process for the purpose of developing a uniform gas choice and non-choice transportation programs proposal and had committed to make a filing no later than February 28, 2019 related to uniform rules. (Joint Petition at 16-17). Direct Energy submitted that this collaborative was in the public interest, as it would provide an opportunity for Direct Energy, as well as any other interested parties, to discuss and address any issues related to UGI's establishment of uniform rules governing the gas choice and non-gas choice transportation programs throughout the UGI service territory prior to any filing.

OSBA addressed the issue of affirmative public benefits in its statement of support as well. The OSBA observed that from a litigation, administrative, and cost standpoint, having one filing instead of three would likely provide a benefit to OSBA, in the form of reduced legal time, administrative processing and expert witness costs. OSBA stated that the settlement both anticipated a post-merger consolidated base rates proceeding and placed requirements upon that base rates filing. Thus OSBA reasoned, the settlement provided administrative affirmative public benefits in this proceeding, and anticipates future, additional affirmative public benefits in the post-merger consolidated base rates proceeding. OSBA submitted that the settlement

therefore satisfied the legal standard set forth in City of York and requested that the Commission approve the settlement in its entirety.

OCA filed a statement in support of the settlement as well. OCA stated that the proposed settlement was in the public interest, in the best interest of UGI's customers, and should be adopted without modification. The terms and conditions of the settlement satisfactorily addressed the issues raised by OCA in its protest and direct testimony and the settlement achieved a suitable compromise for UGI and the ratepayers.

CEO supported the joint petition for approval of settlement and argued that it was in compliance with the applicable laws and regulations and served the public interest for a number of reasons. CEO stated that the settlement ensures that the proposed merger will not have an adverse impact on low-income customers; it affirms the Joint Applicants' intent to continue to use community-based organizations to assist in the implementation of universal service programs; it ensures a transition from three separate gas units into one without any adverse impact to its customers; and it creates efficiencies in the delivery and administration of universal service programs that would benefit low-income customers. CEO asserted that the settlement was consistent with the Commission's obligation to ensure that the merger will affirmatively promote the service, accommodation, convenience, or safety of the public.

I&E also filed a statement in support of the proposed settlement. While I&E did not file direct testimony in this matter it nonetheless shared some of the same concerns that other parties had expressed regarding the proposed merger. I&E felt that after extensive negotiations, I&E could support the ratemaking and low-income settlement terms because I&E believed those terms represented a fair balance of the interests expressed by all the parties during the settlement negotiations. I&E therefore argued that the negotiated settlement terms were the logical conclusion of the merger applications.

Transparency of Data/Ratemaking

In the settlement, the parties agreed to several provisions regarding transparency of data and ratemaking. For example, the parties agreed that UGI will maintain pre-merger

accounting records for the individual companies at least until uniform rates are established for the new gas division. The parties also agreed that UGI will be permitted to implement consolidated cost accounting for the consolidated company without attribution to rate district under certain circumstances. The parties agreed, among other things, to various requirements in the first base rate case post-merger, such as submitting detailed sales and revenue schedules for each rate class within each district. The parties also agreed that the merged company can submit various reports to the Commission in a consolidated manner.

In its statement in support of the settlement, UGI stated that these provisions of the settlement recognize and allow for UGI's customers and employees to benefit from the increased administrative, operational, capital and regulatory efficiencies of the merger. UGI added that these conditions balance the proposals of certain parties for UGI to maintain certain separate books, records and filings for each rate district until such time as uniform rates are approved and implemented by the Commission. UGI added that these provisions are in the public interest because they balance the immediate efficiency benefits of the merger with the need to move toward uniform rates for UGI so that additional efficiency benefits can result and that these provisions represent an appropriate balance of the parties' competing litigation positions in this proceeding.

The OSBA noted in its statement in support of the settlement that, from a litigation, administrative and cost standpoint, these provisions of the settlement will likely provide a benefit to the parties in the form of reduced legal time, administrative proceeding and expert witness costs. The OSBA added that the benefits will be achieved only through the full harmonization of rates and the elimination of separate accounting for the three rate districts. The OSBA noted the extensive testimony provided by its witness in this proceeding in support of its position to require UGI to maintain separate books of account through the next base rate case, to provide separate cost allocation studies, and to submit detailed schedules in its post-merger base rate filing so that the cost implications of the consolidation of customer rates can be addressed. OSBA believes that the terms of the settlement respond to the issues it has raised.

Similarly, the OCA noted in its statement in support that initially the companies proposed to separately maintain and file some items, including purchased gas cost portfolio rates

and energy efficiency and conservation programs, among other things. The OCA noted that it advocated in this proceeding that the companies should be required to continue to maintain separate cost of service and accounting records until the next rate case and that the company would present a proposal to move towards consolidation of rates with individual district revenue requirements and separate cost of service studies. The OCA added that the proposed settlement is in the public interest because it will allow interested parties to fully evaluate the impact of the merger on rates because adequate cost of service information and a full identification of any efficiencies and benefits to customers will be available to review in the case of any future proposal to move towards consolidation. The OCA concluded that the proposed provision of data, when accompanied by other important conditions contained in the settlement, yields a result that is just and reasonable in this application.

Finally, I&E recognized these provisions of the settlement in its statement in support, noting, among other things, that, although it did not file testimony in this proceeding, it supported the concerns raised by the OCA and OSBA regarding the effects going forward of the merger on the transparency of data and future base rate proceedings. I&E noted as well the importance of reviewing any future base rate proposal based upon a detailed plan, adequate cost information, and a full identification of any efficiencies and benefits to customers. I&E also noted that the financial reporting issues pertain to the unintended consequence of allowing one division with a higher rate of return to avoid the consumer protections simply because the other two divisions have a lower rate of return. I&E also noted in its statement in support the concern that approving the merger as proposed would mean that the rates for the three divisions will be harmonized since no cost basis will continue to exist by which differentials could be derived. I&E concluded that it supports these provisions of the settlement because it represents a full and fair compromise that balances the interests expressed by all of the parties during the negotiations and is in the public interest.

Low income programs

In the settlement, the parties agreed to several issues pertaining to the companies' low-income programs. For example, UGI agreed to maintain the existing universal service programs in the three rate districts after the merger at least through the term of the currently

effective Triennial Plan. UGI also agreed to maintain existing or design new programs that encourage program enrollment and will track universal service programs geographically so that records of customer enrollment will be maintained on a county-by-county basis with a baseline for comparison purposes established as of September 30, 2018. Finally, the settlement also provides that UGI will use community-based organizations (CBOs) post-merger as it has done pre-merger.

UGI recognized in its statement in support of the settlement that, under these provisions of the settlement, the proposed merger will maintain existing, collectively administered universal service programs that assist low-income customers in receiving safe, reliable and efficient natural gas service and that recording of county-by-county participation programs will provide baseline data that will serve as important information for the future consolidation of the companies' universal service offerings. UGI concluded that these provisions are in the public interest and should be approved.

In its statement in support of the settlement, the OCA noted that its witness in this proceeding recommended that the companies continue to track spending and need by district and maintain current spending levels in each rate district after the merger is complete. Under the settlement, the companies agree to continue to track and maintain current spending levels in each rate district. As such, the OCA supports these provisions of the settlement as being in the public interest.

Similarly, CEO, which advocates for the low-income population of Luzerne County, recognized these provisions of the settlement in its statement in support of the settlement. CEO stated that it supports the settlement because it ensures that the proposed merger will not have an adverse impact on UGI's low-income customers. CEO also recognized that, in the settlement, UGI reiterates its intent to continue to use CBO's to assist in the implementation of its universal service programs and that the merger will create efficiencies in the delivery and administration of universal service programs that will benefit low-income customers. CEO concluded that the settlement is consistent with the Commission's obligation to ensure that the merger will affirmatively promote the service, accommodation, convenience or safety of the public.

Finally, I&E also recognized the low-income provisions in the settlement in its statement in support of the settlement. I&E again noted that it did not submit testimony on this issue but that it has monitored the proposals offered by the various parties and shares the interests and concerns regarding these issues that were raised. I&E also expressed concern regarding these issues as they pertain to the effect they may have on the entire base of newly formed UGI Gas Division ratepayers. I&E concluded that these provisions are a full and fair compromise that provides the interested parties with resolution of these issues which is in the public interest.

Gas Choice and Non-Choice Transportation

The settlement also includes several provisions regarding gas choice and non-choice transportation. In particular, the parties have agreed to a collaborative process for the purpose of developing an initial strawman uniform proposal. This includes establishing uniformity of rules in each of the consolidated rate districts, among other things. The parties also agreed that UGI will propose uniform rules governing the gas choice and non-gas choice transportation program throughout the service territory no later than February 28, 2019. The parties also agreed that UGI will support the filing of a license amendment filed by a natural gas supplier licensed to provide competitive retail natural gas supply services in one or more of the territories to extend the scope of the existing license. UGI also agreed to other modifications to its gas choice program.

In its statement in support of the settlement, UGI reiterated its position that the merger will not result in anti-competitive or discriminatory conduct in the retail market for natural gas supply in Pennsylvania. UGI also recognized several of the concerns raised by the other parties regarding these issues. UGI noted, however, that the settlement provisions will continue UGI's movement toward a uniform and streamlined set of rules applicable to natural gas suppliers participating in its gas choice and non-choice transportation programs. UGI added that the proposed merger will enhance retail competition in the consolidated service territory and that, therefore, these settlement provisions are in the public interest and should be approved.

I&E also noted in its statement in support of the settlement with regard to these particular provisions that, while it again did not submit testimony on these issues, nor was it an active participant in the settlement negotiations regarding these issues, it has an interest in these issues to the extent they may affect the entire base of the newly formed UGI Gas Division ratepayers. As such, I&E stated that it does not oppose the settlement regarding these issues.

The NGS Parties noted in their statement in support of the settlement that these provisions of the settlement directly affect the issues they raised in this proceeding and serve the public interest. The NGS Parties noted that the settlement improves the service provided to UGI customers in a number of ways, including a POR program which is a very important pre-condition for many NGSs to enter a service territory and improved budget billing. Doing so will allow customers to enjoy the same service across all three service territories. The NGS Parties also stated that the proposed collaborative with the goal of harmonizing and optimizing tariffs across all three entities is important so that the NGSs do not face sometimes vastly different rules between the three companies. The NGS Parties also noted that these provisions of the settlement will simplify interactions between UGI and suppliers, simplify the Commission's oversight of suppliers and reduce the possibilities of misunderstandings regarding which UGI a supplier, customer or the Commission is dealing with. The NGS Parties concluded that, as a whole, these settlement provisions will advance the cause of a more transparent, efficient and egalitarian market for natural gas, where NGSs are on a more level field and where customers stand to reap the benefits of better products and better service.

Finally, Direct Energy also recognized these provisions of the settlement in its statement in support of the settlement. Direct Energy noted that the settlement addresses the establishment of uniform rules, particularly noting the agreement to initiate a collaborative process. Direct Energy noted that having the opportunity to address such issues in advance of the company's filing may help to preserve resources necessary to litigate these issues in the future which will in turn save ratepayers money. Direct Energy also noted other provisions that are beneficial to NGSs and the public, including the agreement to support the filing by an NGS to extend the scope of its existing license, and added that these settlement provisions are beneficial for the competitive market and will assist in providing more shopping options.

Affiliated Interest Issues

In the settlement, the parties agreed that all currently effective affiliate interest arrangements between UGI and affiliates will remain effective, except those agreements that are based on CPG and PNG being separate corporate entities which will be terminated effective upon closing of the merger.

In its statement in support of the settlement, UGI stated that this provision of the settlement is in the public interest because elimination of such agreements achieves substantial administrative and regulatory efficiencies.

I&E, as with the other issues it discussed in its statement in support, noted that, while it again did not submit testimony on these issues, nor was it an active participant in the settlement negotiations regarding these issues, it has an interest in these issues to the extent they may affect the entire base of the newly formed UGI Gas Division ratepayers. As such, I&E stated that it does not oppose the settlement regarding these issues.

Disposition

Having reviewed the various filings, including the joint petition for settlement and statements in support of settlement, we conclude that the settlement provides substantial affirmative benefits and is in the public interest. Therefore, the settlement should be adopted in its entirety without modification. The Commission strongly encourages settlement and the parties are commended for reaching a settlement in this case.

The settlement allows UGI to move forward with the proposed merger. The parties have demonstrated that such a merger would provide substantial administrative, operational, capital and regulatory benefits. Certain business functions, currently performed in duplicate or triplicate by the three current companies, would be consolidated and performed by a single company post-merger. These efficiencies would also be felt by the Commission as certain future regulatory or rate increase filings would be reduced as UGI would be one, rather than three, separate entities.

It has also been demonstrated that the proposed merger would extend certain benefits to customers such as continued low-income programs and the design of new programs to encourage enrollment. For example, the settlement requires that UGI will maintain records of customers enrolled in various universal service programs on a county-by-county basis. Providing benefits to low-income customers is a substantial affirmative public benefit that warrants adopting the settlement in its entirety without modification.

The settlement also includes improvements to UGI's customer choice programs, including establishing uniform rules in each rate district. The settlement requires a collaborative to be held regarding UGI's customer choice program wherein additional issues to help promote and foster competition will be addressed. These agreements, and others, are in the public interest because they will promote the Commission's goals of ensuring choice for the provision of natural gas service while also protecting low-income customers.

We also note that the settlement should be approved as being in the public interest because the settlement will save the parties from expending substantial time and expense involved with further litigation. Although the parties exchanged discovery and some pre-served testimony, additional costs could have included additional pre-served testimony, extensive hearings, briefs, exceptions and possible appeals. Avoiding such expenditures minimizes the costs that UGI might ultimately pass on to the ratepayers, and also conserves the resources of all other parties involved in these proceedings and Commission resources as well.

In addition, we note that the settlement should be approved as being in the public interest because the parties have engaged in extensive discovery and other litigation-related efforts in order to properly investigate and resolve the issues presented, all of which was admitted into the record via stipulation. These efforts demonstrate that the initial filings of the Joint Applicants and the responses to the filings have been thoroughly vetted and considered by all concerned parties. The settlement is also the result of extensive and fruitful negotiations between all the parties and represents what each party believes to be a fair and reasonable compromise. This is of particular note as the parties in this matter have diverse and competing interests but were able to reach a settlement on all issues. These efforts also demonstrate that the parties are satisfied that there are no unresolved evidentiary issues at this point in the proceeding.

The settlement is in the public interest because it is supported by substantial evidence. Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. As noted above, the parties stipulated to the admission of the pre-served testimony in this proceeding. That pre-served testimony supports adopting the settlement.

In conclusion, we recommend that the settlement submitted by the parties be approved in its entirety without modification because it complies with the relevant sections of the Public Utility Code regarding mergers and is consistent with Commission regulations promoting settlements.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the application. 66 Pa. C.S. § 1102(a)(3); 52 Pa. Code § 69.901(b)(1).
2. The Commission may issue a certificate of convenience 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.” 66 Pa. C.S. § 1103(a).
3. The Commission must 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. Pa. Pub. Util. Comm’n, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972); Popowsky v. Pa. Pub. Util. Comm’n, 594 Pa. 583, 937 A.2d 1040 (2007).
4. The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103 (Opinion and Order entered July 14, 2011); *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

5. Parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm'n v. MXenergy Electric Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the August 14, 2018 joint motion for admission of written testimony by stipulation be granted and the testimony and exhibits referenced therein be admitted into the record in this matter and the parties are directed to provide the requisite copies of all material admitted in the stipulation to the Commission's Secretary's Bureau.

2. That the Joint Petition for Settlement filed at Docket Numbers A-2018-3000381, A-2018-3000382 and A-2018-3000383 on July 20, 2018 be approved in its entirety and without modification.

3. That the proposals set forth in the March 8, 2018 Merger Application be approved subject to the terms and conditions of the Joint Petition for Settlement of All Issues submitted on July 20, 2018.

4. That this matter be marked closed.

Date: September 7, 2018

/s/
Benjamin J. Myers
Administrative Law Judge

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge