



COMMONWEALTH OF PENNSYLVANIA

September 13, 2018

**E-FILED**

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

**Re: Pennsylvania Public Utility Commission v. UGI Utilities, Inc. – Electric Division /  
Docket No. R-2017-2640058**

Dear Secretary Chiavetta:

Enclosed please find the Exception to the Recommended Decision, 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**

<b>Pennsylvania Public Utility Commission</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. R-2017-2640058</b>
	:	
<b>UGI Utilities, Inc. – Electric Division</b>	:	

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**EXCEPTION TO THE RECOMMENDED DECISION  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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

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

**Office of Small Business Advocate  
300 North Second Street, Suite 202  
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**Date: September 13, 2018**

**I. Introduction**

On January 26, 2018, UGI Utilities, Inc. – Electric Division (“UGI Electric” or the “Company”) filed Tariff Electric – Pa. P.U.C. Nos. 6 and 2S with the Pennsylvania Public Utility Commission (“Commission”). The proposed Tariff, as originally filed, would increase UGI Electric’s annual revenue by \$9.254 million per year. The Company also proposed a new Storm Expense Rider, a Universal Service Program Rider, and a new Rate EV (for Electric Vehicle Services).

On March 12, 2018, UGI Electric submitted Supplemental Direct Testimony and Revised Exhibits.

On February 12, 2018, the Office of Small Business Advocate (“OSBA”) filed a Formal Complaint.

On March 1, 2018, the Commission entered an Order suspending the Tariffs and instituting an investigation before the Office of Administrative Law Judge (“ALJ”).

On March 22, 2018, a Prehearing Conference was held before ALJs Steven K. Haas and Andrew M. Calvelli.

On March 30, 2018, ALJs Haas and Calvelli issued their Scheduling Order.

On April 26, 2018, the OSBA served the Direct Testimony of Robert D. Knecht.

On May 11, 2018, the OSBA served the Supplemental Direct Testimony of Mr. Knecht.

On May 25, 2018, the OSBA served the Rebuttal Testimony of Mr. Knecht.

On June 7, 2018, the OSBA served the Surrebuttal Testimony of Mr. Knecht.

On June 11 & 12, 2018, Evidentiary Hearings were held before ALJs Haas and Calvelli.

On June 20, 2018, the Company filed a Partial Stipulation Resolving Certain Contested Issues (“Partial Stipulation”) with ALJs Haas and Calvelli.

**On July 2, 2018, the OSBA submitted its Main Brief.**

**On July 18, 2018, the OSBA submitted its Reply Brief.**

**On August 24, 2018, ALJ Haas and ALJ Calvelli issued their Recommended Decision (“RD”).**

**The OSBA submits the following Exception in response to the RD.**

## II. Exceptions

**Exception No. 1: The ALJ erred by recommending that the Company may base its Fully Projected Future Test Year using a year-end base methodology. (RD, at 80)**

The ALJs correctly framed the issue, as follows:

At issue in this case is whether UGI Electric may base its FPFTY rate base (and associated depreciation expense) on the use of a year-end rate base methodology, as it proposes, or whether an average rate base methodology, as recommended by the opposing parties, and joined by OSBA, should be used.

RD, at 12.

The resolution of this issue depends upon the interpretation of Section 315(e) of the Public Utility Code, which states, as follows:

In discharging its burden of proof the utility may utilize a future test year or a fully projected future test year, which shall be the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under Section 1308(d) (relating to voluntary changes in rates). The commission shall promptly adopt rules and regulations regarding the information and data to be submitted when and if a future test period or a fully projected future test year is to be utilized. Whenever a utility utilizes a future test year or a fully projected future test year in any rate proceeding and such future test year or a fully projected test year forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year or a fully projected future test year, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data. Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.

66 Pa. C.S. § 315(e).

As the ALJs recognized, the OSBA argued for the average rate base methodology. The use of average rate base for the fully projected future test year ("FPFTY") provides a proper

match between the period when costs are incurred and the period when the new rates are in place. In contrast, the Company's year-end methodology does not. Under the Company's methodology, ratepayers are charged for the *entire year* for assets that go into place *throughout the year*. Under the average method, the rates charged throughout the year reasonably reflect an average of the plant costs throughout the year. *OSBA Main Brief*, at 5-12; *OSBA Reply Brief*, at 4-5.

Nevertheless, the ALJs decided in favor of the Company, and recommended the use of the year-end rate base methodology. RD, at 19. The ALJs stated, as follows:

We find that the *plain language* and policy of Act 11 supports UGI Electric's position.

RD, at 19 (emphasis added). However, there is no plain language in Section 315(e) which resolves this issue. The ALJs cited to no plain language in Section 315(e) that requires the use of the year-end methodology. The ALJs have misinterpreted the statute and their recommendation must thus be rejected by the Commission.

The ALJs also find support for their recommendation on the last sentence of Section 315(e):

Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.

66 Pa. C.S. § 315(e). Considering Section 1315, the ALJs stated, as follows:

We also find *persuasive* that Section 315(e) specifically exempts application of Section 1315 which, for electric utilities, requires projects to be 'used and useful' before being included in the rate base. Thus, the 'used and useful' standard in Section 1315 is not a bar to including all plant added during the FPFTY.

RD, at 19-20 (emphasis added).

There is nothing persuasive about the last sentence of Section 315(e). Nothing in Section 315(e), including the last sentence, requires the adoption of the year-end rate base methodology. Exempting the FPFTY methodology from the “used and useful” standard is merely a *necessary pre-condition* for allowing the use of a FPFTY. Without that exemption, FPFTY would, by definition, violate the used and useful standard.

Furthermore, there is no policy that concludes that the year-end rate base methodology must be adopted. Specifically, the ALJs comment on the problems associated with regulatory lag in the pre-Act 11 environment. RD, at 19. The OSBA explicitly acknowledged that regulatory lag was a legitimate concern addressed by Act 11. *OSBA Main Brief*, at 7. However, the use of average rate base *does* reasonably address the regulatory lag problem and is *not* a reversion to the pre-Act 11 environment. In the prior regulatory regime, rates were set based on rate base in place at the time the rates would go into effect. These rates therefore would not reflect any changes in rate base over the following year, thereby creating a regulatory lag problem. In contrast, under the average year method, rates going into effect at the beginning of the FPFTY (and remaining in effect through the FPFTY) would reflect the average rate base over the course of the FPFTY. Thus, rate revenues and rate base costs would match.

Under the Company’s year-end methodology as recommended in the RD, rates for the entire FPFTY would reflect the full annual cost for all investments in place at the end of the FPFTY, even if those assets were in place for a short time. In effect, the year-end methodology would replace a regulatory lag problem with a “regulatory lead” problem. *OSBA Reply Brief*, at 5.

Significantly, what is missed by the ALJs in their legal analysis is that Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, still requires that rates be just and reasonable.

Section 315(e) does *not* exempt the FPFTY methodology from that requirement. The ALJs' recommendation to adopt the year-end rate base methodology results in a scenario where ratepayers will be charged on Day 1 for all facilities projected to be in operation on Day 365. Such a result violates any legal definition of just and reasonable.

The OSBA is cognizant of the fact that the FPFTY methodology will result in some degree of mismatch between rates charged to consumers and when plant goes into service, since rates cannot be adjusted every time the Company installs new equipment. However, there is no requirement that an unbalanced mismatch be allowed, in which revenues for the FPFTY do not match costs for the same FPFTY. The ALJs observed:

Thus, through use of the FPFTY, a utility is allowed, in essence, to require ratepayers to pre-pay a return on its projected investment in future facilities. This is true because the future facilities are not only not in place and providing service at the time the new rates will take effect, but there is also no guarantee of them being completed and placed into service.

RD, at 20. The ALJs are correct. But that does not mean that the FPFTY methodology should be used to exacerbate the impact upon ratepayers by allowing the year-end methodology to require ratepayers to pay a full year's cost on Day 1 for facilities that may not go into service until Day 365.

The OSBA respectfully submits that this is an issue of matching revenues and costs within the FPFTY in a just and reasonable manner. UGI Electric has rate base in place at the beginning of the FPFTY and will incur additional capital costs throughout the FPFTY. The costs associated with part of the additional capital will be incurred for most of the year, but the costs for another part of the additional capital will only be incurred for a small portion of the year. The OSBA submits that test year rates should reflect the fact that costs associated with the rate base added in the FPFTY are not incurred throughout the entire year, but only for part of the

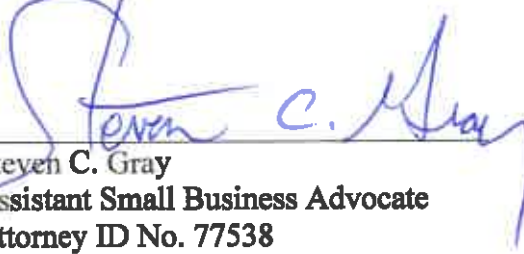


**year. The average rate base approach reasonably reflects this reality – the year-end rate base methodology does not.**

**III. Conclusion**

Therefore, in view of the foregoing, the OSBA respectfully requests that the Commission adopt the average rate base FPFTY methodology advocated by the OSBA in its Main Brief.

Respectfully submitted,



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Attorney ID No. 77538

For:

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Dated: September 13, 2018

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	:	<b>Docket No. C-2018-2647268</b>
<b>UGI Utilities, Inc. – Electric Division</b>	:	

**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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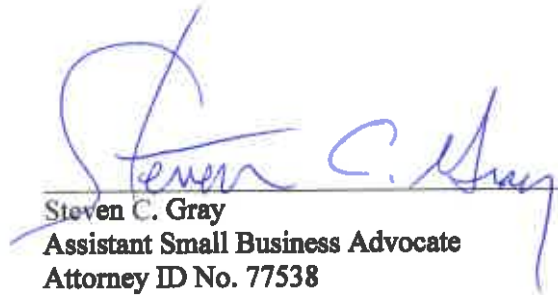
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DATE: September 13, 2018

  
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