**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105**

Public Meeting held September 20, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard, dissenting

David W. Sweet

John F. Coleman, Jr.

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| 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 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 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, 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 | A-2018-3000381  A-2018-3000382  A-2018-3000383 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision of Administrative Law (ALJ) Judge Benjamin J. Myers and Deputy Chief ALJ Joel H. Cheskis, issued on September 12, 2018, at the above-captioned docketed proceeding. In the Recommended Decision, the ALJs recommend granting the Joint Petition for Approval of Settlement of All Issues (Joint Settlement), which was filed on July 20, 2018, by the following parties: UGI Utilities, Inc. – Gas Division, UGI Central Penn Gas, Inc., UGI Penn Natural Gas, Inc. (UGI), the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the NGS Parties,[[1]](#footnote-2) the Commission for Economic Opportunity, and Direct Energy (collectively, Joint Petitioners).[[2]](#footnote-3), [[3]](#footnote-4) Under the terms of the Joint Settlement, the Joint Petitioners have indicated that they waive their rights to file Exceptions if the ALJ adopts the Settlement without modification.

It is the policy of the Commission is to encourage settlements. 52 Pa. Code §§ 5.231. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Regulatory proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, we do not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

We have thoroughly reviewed the Joint Settlement and, except for one concern, we agree with the ALJs’ Recommended Decision that the Joint Settlement, *inter alia*, should be approved.[[4]](#footnote-5) Based on our review of the Joint Settlement, however, it is unclear in Paragraph No. 8 of the Joint Settlement as to when UGI will discontinue filing separate Chapter 71 Financial Earnings Reports for each of the three UGI natural gas entities.[[5]](#footnote-6)

We believe it is necessary to ensure that the Commission is able to continue appropriately monitoring each of the three UGI Districts’ earnings. This necessity originates from the requirements under Section 1358(b)(3) of the Public Utility Code, 66 Pa. C.S. § 1358(b)(3), which requires that a utility’s distribution system improvement charge be reset to zero if the utility’s financial reporting indicates it is overearning. Therefore, notwithstanding any provision in this Joint Settlement, we shall hereby clarify and require, as a condition to approving the Joint Settlement, that UGI must continue to file quarterly and annual earnings reports for each of the three UGI natural gas entities until further notice by the Commission. We believe such clarification is necessary because, upon approval of the Settlement, each UGI District will continue to have separately tariffed DSIC and distribution charges. We note, however, that the requirement to file quarterly and annual earnings reports for each of the three UGI natural gas entities may become unnecessary in the future; but that will be determined when the three districts’ rates become uniform.

Considering the above, we shall give the parties five-days from the date of entry of this Opinion and Order to submit any comments concerning this requirement. If no adverse comments are filed within five days, the Joint Settlement shall be approved, without further action by the Commission, as clarified by this Opinion and Order, on or before September 25, 2018.[[6]](#footnote-7) If adverse comments are filed, we will issue a forthcoming Opinion and Order addressing the merits of the Comments and the disposition of the Joint Settlement; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement of All Issues, which was filed on July 20, 2018, by UGI Utilities, Inc. – Gas Division, UGI Central Penn Gas, Inc., UGI Penn Natural Gas, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the NGS Parties,[[7]](#footnote-8) the Commission for Economic Opportunity, and Direct Energy be, and hereby is, granted on the condition that UGI shall continue to file quarterly and annual earnings reports for each of the three UGI natural gas entities until further notice by the Commission, consistent with this Opinion and Order.

2. That, within five days from the date of entry of this Opinion and Order, interested parties are directed to file comments with the Commission with any concerns regarding the condition required by Ordering Paragraph No. 1, above.

3. If no adverse comments are received from any of the parties within five days from the date of entry of this Opinion and Order, then it is further ordered:

a. That the Recommended Decision of Administrative Law Judge Myers and Deputy Chief Administrative Law Judge Joel H. Cheskis, which was issued on September 12, 2018, at Docket Nos. A-2018-3000381, A-2018-3000382 and A-2018-3000383 is, hereby, adopted, without further action by the Commission;

b. That the Joint Petition for Approval of Settlement of All Issues is, hereby, granted, and the Joint Settlement is approved, consistent with the clarification in this Opinion and Order;

c. That the August 14, 2018 joint motion for admission of written testimony by stipulation is, hereby, granted and the testimony and exhibits referenced therein are, hereby, 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.

d. That the proposals set forth in the March 8, 2018 Merger Application are, hereby, approved subject to the terms and conditions of the Joint Settlement submitted on July 20, 2018.

e. That this matter be marked closed.

4. If adverse comments are received from any of the parties within five days from the date of entry of this Opinion and Order, we shall issue a forthcoming Opinion and Order addressing the merits of the Comments and the disposition of the Administrative Law Judge’s Recommended Decision on the Joint Settlement.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 20, 2018

ORDER ENTERED: September 20, 2018

1. The NGS Parties are comprised of Shipley Choice, LLC, Dominion Retail, Inc., Interstate Gas Supply, Inc. d/b/a IGS Energy and Rhoads Energy. [↑](#footnote-ref-2)
2. Direct Energy collectively refers to Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC. [↑](#footnote-ref-3)
3. It is noted that the UGI Industrial Intervenors did not join in this Settlement but have authorized the Joint Petitioners to state their non-opposition to the Settlement. [↑](#footnote-ref-4)
4. We will not repeat the history of the proceeding or the terms of the Joint Settlement in this Opinion and Order; rather, we refer the reader to the ALJs’ Recommended Decision which provides a detailed discussion on these and all other matters related to this proceeding. [↑](#footnote-ref-5)
5. Paragraph No. 8 of the Joint Settlement states: “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.” [↑](#footnote-ref-6)
6. Alternatively, the Parties retain the option pursuant to Paragraph No. 23 of the Joint Settlement to file an election to withdraw from the settlement within five days of entry of this Opinion and Order and to proceed with litigation. [↑](#footnote-ref-7)
7. The NGS Parties are comprised of Shipley Choice, LLC, Dominion Retail, Inc., Interstate Gas Supply, Inc. d/b/a IGS Energy and Rhoads Energy. [↑](#footnote-ref-8)