



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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IN REPLY PLEASE
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September 24, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, Second Floor
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 for filing please find the Bureau of Investigation and Enforcement's (I&E)
Reply Exceptions for the above-captioned proceeding

Copies are being served on all active parties of record. If you have any questions,
please contact me at (717) 425-7593.

Sincerely,

Scott B. Granger
Prosecutor

Bureau of Investigation and Enforcement
PA Attorney I.D. No. 63641

SBG/sea
Enclosure

cc: Certificate of Service
ALJ Steven K. Haas
ALJ Andrew M. Calvelli
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated September 24, 2018, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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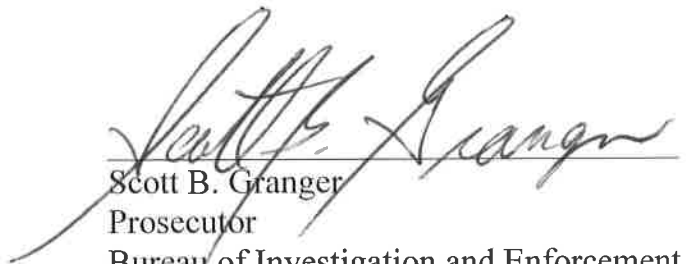
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BUREAU OF INVESTIGATION AND ENFORCEMENT’S
REPLIES TO THE EXCEPTIONS OF
UGI UTILITIES – ELECTRIC DIVISION**

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Dated: September 24, 2018

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I. INTRODUCTION

Pursuant to 66 Pa. C.S. § 335 and 52 Pa. Code § 5.535, I&E files the following I&E Replies to the Exceptions (“UGI Exceptions”) of UGI Utilities – Electric Division (“UGI Electric” or “Company”) to the Recommended Decision of Administrative Law Judges Steven K. Haas and Andrew M. Calvelli (“RD”) issued on August 24, 2018 in the above captioned proceeding. I&E respectfully requests that the UGI Exceptions be denied consistent with the arguments made in I&E’s Main Brief (“I&E MB”), Reply Brief (“I&E RB”), I&E’s pre-served testimony with exhibits, as well as the I&E Exceptions (“I&E Exceptions”) filed on September 13, 2018.

A. History of Proceeding

Briefly, on January 26, 2017, UGI Electric filed its proposed Tariff - Electric - PA. P.U.C. Nos. 6 and 2S (“Tariffs 6 and 2S”) with a proposed effective date of March 27, 2018. UGI Electric’s January 26th filing, however, did not address the impact of the Tax Cut and Jobs Act of 2017 (“TCJA”) signed into law on December 22, 2017, which significantly reduced the corporate Federal Income Tax rate from 35% to 21%. Later, on March 12, 2018, UGI Electric filed supplemental direct testimony after its analysis of the TCJA was complete, revising its filing and reducing its revenue increase request from \$9,254,354 to \$8,491,187. UGI Elec. St. No. 2-SD at 3. Further, I&E incorporates the summary of the procedural history of this proceeding set forth in the I&E Exceptions.

The parties actively participating in this proceeding are UGI Electric, I&E; the Office of Consumer Advocate (“OCA”); and the Office of Small Business Advocate (“OSBA”).

The proceeding was assigned to Administrative Law Judges Steven K. Haas and Andrew M. Calvelli (“ALJs”). I&E recommends the Commission adopt I&E’s recommendations set forth in its I&E Exceptions, as well as the recommendations made by OCA and OSBA to the extent they are not in conflict with I&E’s exceptions, and reverse or modify the Administrative Law Judges Recommended Decision accordingly.

B. Response to UGI Electric’s Introduction

UGI Electric improperly included arguments in its Introduction that should properly be set forth in the UGI Exceptions that were merely a regurgitation of the arguments propounded in UGI Electric’s Main and Reply Briefs; all of which were already considered by the ALJs in preparation of their Recommended Decision. Therefore, no response is required and the UGI Electric arguments regarding Cost of Common Equity; Operations Center; Recalculation of Operations Center Alignment; 2018 One-Time Tax Adjustment Surcharge; Excess Accumulated Deferred Income Taxes; Incentive Compensation; Environmental Remediation Expense; Rate Case Expense; and Scale Back should be rejected. Further, I&E incorporates as rebuttal, if necessary, the arguments made in its I&E Main and Reply Briefs; as well as I&E’s preserved written testimony and exhibits.

II. I&E REPLIES TO EXCEPTIONS

1. I&E Reply to UGI Electric Exception No. 1: The RD’s proposed cost of common equity is not too low, but rather, is too high and should be reduced to the I&E recommended 8.62%. RD at 54-90.

UGI Electric excepted to the RD’s conclusion that the Company’s cost of common equity is 10.00%. RD at 89. UGI Electric argues that the principal errors in the RD are

its rejection of a DCF leverage adjustment; reliance on an erroneous CAPM analysis as a check on the DCF result; failure to consider other methods, particularly the RP; and failing to recognize additional risk factors. UGI Exceptions at 6. Additionally, UGI electric argues that it demonstrated that a cost of common equity of 11.25%, inclusive of a management performance adder, was appropriate in this proceeding. UGI Exceptions at 7.

I&E rejects the Company's argument that it demonstrated that a cost of common equity of 11.25% was appropriate in this proceeding. Instead, I&E argues that an 8.62% cost of common equity is appropriate in this proceeding. *See* I&E MB at 71-74. *See also* I&E St. No. 2; I&E St. No. 2-SR. Further, I&E asserts that the Company's entire return on equity argument was and is corrupted by UGI Electric's attempt to manipulate its Quarterly Earnings Reports ("QERs"). The Commission cannot ignore the purposeful statements of UGI Electric witness Paul Szykman in UGI Statement Number 1 wherein he claims that UGI Electric was only earning 1.92% return on common equity for the 12 months ending September 30, 2019. I&E MB at 81, *quoting* UGI Elec. St. No. 1 at 6. Additionally, I&E witness Joseph Kubas clearly demonstrated that UGI Electric's QER for the quarter ending September 30, 2017 was manipulated to show a return on equity of 5.22%, when UGI Electric was actually earning 14.9% return on equity. I&E MB at 86. *See also* I&E St. No. 5 at 1-15; I&E St. No. 5-SR at 1-30.

A. The RD correctly rejected the leverage adjustment proposed by UGI Electric. RD at 75.

UGI Electric argues that it demonstrated that a leverage adjustment is necessary because the DCF analyses by the parties and the RD have understated the cost of common equity. UGI Exceptions at 9. The Company claims a leverage adjustment is proper in this case because the Company has a stock price above its book value, has embedded cost of debt different from the marginal cost of debt, and has a market value or capitalization of its equity that is greater than the book value of its equity. UGI Exceptions at 9-10. The Company then concludes that the DCF cost rate based on market prices must be adjusted to reflect the greater financial risk created by a higher debt ratio when that cost is applied to a book value capitalization in utility proceedings. UGI Exceptions at 10.

I&E rejects the Company's arguments and incorporates the pre-served testimony of I&E witness Anthony Spadaccio. *See* I&E St. No. 2 at 40-44; I&E St. No. 2-SR at 10-14. Further, the ALJs correctly reasoned that no leverage adjustment was necessary. RD at 75. The RD correctly noted that the Commission rejected PPL's request for a leverage adjustment in the Commission's 2012 *PPL* Order. RD at 74. The RD quoted the 2012 *PPL* Order where the Commission stated:

Based upon our analysis of the evidence of record, we are persuaded by the arguments of the OCA and I&E that PPL's requested leverage adjustment is not reasonable and should be denied. The fact that we have granted leverage adjustments in a few select cases in the past as noted by PPL does not mean that such adjustments are warranted in all cases. The award of such an adjustment is not precedential but discretionary with the Commission. In fact, the Commission has

rejected leverage/financial risk adjustments that are similar to the one proposed by PPL in this proceeding.

RD at 74-75. Therefore, UGI Electric's Exception No. 1A should be denied.

Interestingly, the Company references the RD's discussion of OCA witness Mr. Rothchild discussing UGI Electric witness Mr. Moul's testimony with regard to a passage indicating that if a company is over earning, a leverage adjustment is not necessary. UGI Exceptions at 10, *citing* RD at 74. The Company then states that neither the OCA nor any other party submitted any evidence that UGI Electric is overearning. UGI Exceptions at 10. This statement is false. To the contrary, I&E witness Joseph Kubas submitted extensive testimony in both his direct and surrebuttal testimony arguing that the UGI Electric was actually earning a 14.9% return on equity which was revealed when it's September 30, 2017 QER was adjusted to correct for the Company's attempts to manipulate the QERs the Company was submitting pursuant to Chapter 71 of the Commission's regulations. *See* I&E St. No. 5 at 1-15; I&E St. No. 5-SR at 1-30; I&E MB at 81-93; and I&E RB at 65-74. It is therefore reasonable to conclude that I&E presented evidence surmising that a company that is earning 14.9% return on equity is over earning.

B. The RD properly limited the weight given to the other methodologies while relying on the DCF methodology. RD at 57-82.

UGI Electric argues that multiple methodologies must be used in order to properly evaluate the cost of common equity. UGI Exceptions at 11. UGI Electric witness Mr. Moul is quoted as stating "it is for this reason that I have used more than one method to measure the Company's cost of equity. As described below, each of the methods used to

measure the cost of equity contains certain incomplete and or overly restrictive assumptions and constraints that are not optimal.” UGI Exceptions at 11. The Company then relies on the Commission’s Order in the 2012 *PPL* proceeding to suggest that the Commission look at the DCF model, with a capital asset pricing model (“CAPM”) check, even suggesting giving some weight to the risk premium (“RP”) method. UGI Exceptions at 12. The Company, however, only gives a passing mention to the now controlling 2017 *City of Dubois - Bureau of Water* decision in a footnote. *Id.* Finally, UGI Electric stubbornly suggests that the Commission should incorporate the Company’s RP method in its analysis and adjust the cost of common equity closer to the 11.25% rate calculated by the Company under this method.

I&E rejects the Company’s arguments and UGI Electric’s Exception No. 1B should be denied. The ALJs correctly noted that I&E recommended using the results of the CAPM as a comparison to the DCF results. RD at 87. The RD properly reasoned “in the recent case of *City of Dubois - Bureau of Water*, Docket No. R-2016-2554150 (Opinion and Order entered March 28, 2017), the Commission reaffirmed its support for I&E’s methodology of basing its recommended cost of common equity on a DCF method analysis with a CAPM analysis solely as a check.” RD at 87. The ALJs correctly noted, the Commission stated “although there are various models used to estimate the cost of common equity, the DCF method applied to a barometer group of similar utilities, has historically been the primary determinant utilized by the Commission.” RD at 87, quoting *City of DuBois - Water Bureau*, p. 88; citing I&E MB p. 71. Further, the RD notes, as the OCA argued, the Commission has indicated a preference for using the DCF

method to establish reasonable common equity costs. RD at 87. The RD, *citing* the OCA MB, stated “[H]istorically, we have primarily relied on the DCF methodology in arriving at our determination of the proper cost of common equity. We have, in many recent decisions, determine the cost of common equity primarily based upon the DCF method and informed judgment.” RD at 87, *citing* OCA MB at 55-56, *citations omitted*. The RD correctly concluded, “[A]ccordingly, we will not utilize the Comparable Earnings Method or the Risk Premium Method. We will utilize the DCF method with the CAPM as a check.” RD at 88. Although it appears the ALJs used the CAPM as more than a check and used it to justify a bump-up of the DCF result.

For I&E’s full discussion of cost of common equity, *see* the direct and surrebuttal testimony of I&E witness Anthony Spadaccio. I&E St. No. 2; I&E Ex. No. 2; I&E St. No. 2-SR. Further, as I&E noted in its I&E Exception No. 14, UGI Electric’s 54.02% equity in its rate structure formula far outweighs the most recent averages of 48.90% in 2017, 48.91% in 2016, and 49.54% in 2015 (*See* S&P Global Rate Case Statistics, Total US, Service Type Electric, Metric Type Mean, Return on Capital, Return on Equity) evidencing that UGI Electric has far less risk than the average electric utility.

C. The RD properly rejected UGI Electric’s proposed risk free rate of return and proposed size adjustment, and properly adopted I&E’s forecasted CAPM analysis. RD at 88-89.

UGI Electric argues that the RD erred by relying on an incorrect forecasted CAPM analysis. UGI Exceptions at 13. In support of its argument, UGI Electric incorrectly states “while the Commission *should use* methodologies in addition to the DCF *to calculate* UGI Electric’s cost of common equity, including the CAPM and RP, ...” in an

effort to argue that the Commission should not adopt the forecasted CAPM cost rate recommended by the RD. UGI Exceptions at 13 (*emphasis added*). Further, UGI Electric argues that it demonstrated that the appropriate risk-free rate of return (“Rf”) in the Rf calculation should be the 3.95% using 30-Year Treasury Bonds rather than 10-Year Treasury Notes. UGI Exceptions at 14, *citing* RD at 79. Additionally, UGI Electric argues that it demonstrated that a size adjustment was necessary to recognize the inherently higher risks associated with equity investments in a smaller company. UGI Exceptions at 14. Finally, UGI Electric claimed that based on the above proposed size adjustments, the Commission should adopt a forecasted CAPM calculation of 12.97% and a cost of common equity above the 10.40% the Commission adopted in the 2012 *PPL* Order. UGI Exceptions at 15.

I&E rejects the Company’s arguments. The RD properly utilized the forecasted CAPM of 9.83% based upon I&E’s calculation. RD at 88. The RD also notes that it adopted a historic CAPM of 10.18% based upon I&E’s calculation, but using an arithmetic mean based upon UGI Electric’s testimony. RD at 88. I&E notes that it excepted to the RD’s use of the arithmetic mean for the CAPM historical calculation instead of the geometric mean. *See* I&E Exception No. 15. I&E has consistently recommended using the geometric mean for the CAPM historical calculation. *Id.*

Further, the RD properly agrees with I&E’s use of the 10-Year Treasury Note for the historic CAPM analysis risk-free rate of return rather than a 30-Year Treasury Bond as recommended by UGI Electric. RD at 77-79. *See also* I&E St. No. 2 at 24-28; I&E St. No. 2-SR at 14-16.

Additionally, the RD properly rejects UGI Electric's proposed size adjustment. RD at 81. The RD correctly relies on I&E's testimony refuting the Company's proposed size adjustment as well as the testimony of OCA witness Mr. Rothchild. RD at 80-81. *See also* I&E St. No. 2 at 45-46; I&E St. No. 2-SR at 20-23.

Finally, having rejected the Companies proposed risk-free rate of return and size adjustment, the ALJs properly rejected UGI Electric's proposed forecasted CAPM calculation of 12.97%. And while the RD properly accepted I&E's forecasted CAPM calculation (using the Company's updated numbers), the RD improperly applied the arithmetic mean to the historical CAPM calculation. RD at 78. I&E argues that the RD should have applied the geometric mean to the historical CAPM calculation and should have adopted I&E's 8.98% historic CAPM. RD at 88. Further, even accepting the RD's forecasted CAPM of 9.83% (using UGI Electric's updated numbers); the final CAPM results should be 8.98% historic CAPM and 9.83% forecasted CAPM, confirming the reasonableness of I&E's DCF result of 8.62% for cost of common equity. *See* I&E St. No. 2 at 20-24.

D. The RD properly rejected UGI Electric's proffered evidence of increased risk factors in the DCF analysis. RD at 82-83.

UGI Electric argues that the RD erroneously ignores the requirement that the equity return for UGI Electric must reflect the size of the Company. UGI Exceptions at 15. UGI Electric then erroneously states the zone of reasonableness established in this proceeding demonstrates that UGI Electric's cost of common equity is between 10.55% and 12.55%. UGI Exceptions at 15. Further, UGI Electric erroneously accuses the RD

of running afoul of the Company's proffered fundamental requirement of reflecting the size of the Company in the return on equity by ignoring claimed un rebutted evidence regarding the increased risks faced by UGI Electric. UGI Exceptions at 16. Finally, the Company reiterates its argument that the CAPM return must be adjusted upward by 1.02% in recognition of the Company size. UGI Exceptions at 16.

I&E rejects the Company's arguments. Further, the ALJs properly recommended against consideration of the additional risk factors identified by UGI Electric as a reason to increase the allowed return on common equity. RD at 82. Quite simply, UGI Electric's arguments regarding the claimed increased risk factors are not credible, nor are they supported by the record evidence in this proceeding. In particular, the Company claims that the TCJA will have significant negative impacts on the Company's credit quality. This argument, however, has been soundly rejected by the Commission in the Commission's May 17, 2018 Temporary Rates Order regarding the TCJA at Docket No. M-2018-2641242. *See* Temporary Rates Order at 16-17; I&E MB at 55-62. *See also* I&E St. No. 2 at 30-37. Additionally, the Company's argument that the volatility of common stock investments has increased markedly since 2017 is also not credible and not supported by the record evidence in this proceeding. *See* RD at 66, *citing* OCA St. No. 3 at 9-10, OCA MB at 54. *See also* I&E St. No. 2 at 30-37. And finally, UGI Electric's claim that it is a small company that faces increased risks that further justify a higher cost of common equity has also been soundly rejected by the ALJs. RD at 80-81. *See also*, I&E St. No. 2 at 45-46; I&E St. No. 2-SR at 20-23. The RD did not ignore any evidence in this proceeding as alleged by the Company and properly recommended

against consideration of the claimed additional risk factors identified by UGI Electric as a proposed reason to increase the allowed return on common equity.

I&E again asserts the reasonableness of its recommended 8.62% for the cost of common equity. I&E's CAPM analysis results confirm the reasonableness of I&E's recommended DCF of 8.62% and reaffirms that the CAPM results should only be used as a check for reasonableness of I&E's DCF result. The CAPM results should not be used as a justification to modify or increase I&E's DCF result. The ALJs' recommended 9.80% return on equity (exclusive of the management performance points) should be reduced to 8.62%; or, 8.82% if the Commission affirms the inclusion of the management performance points.

E. Conclusion as to the Cost of Common Equity. RD at 89.

UGI Electric simply reiterates its arguments from UGI Exceptions 1A through 1D *supra*. The Company continues to plead that it has demonstrated that its proposed 11.25% cost of common equity is reasonable and appropriate under *various* methodologies and by demonstrating that certain financial conditions increase the Company's risk profile, thereby necessitating a higher return; all of which have been rejected.

I&E rejects UGI Electric's arguments made in UGI Exceptions 1A through 1D as stated *supra*. Further, I&E recommends the Commission reject UGI Electric's arguments and affirm, reverse or modify the RD consistent with the I&E Replies to the UGI Exceptions *supra* and I&E Exceptions No. 1 through 19.

2. I&E Reply to UGI Electric Exception No. 2: The RD correctly rejected the Company's revised claim to recover the costs of its new Operations Center. RD at 22-24.

UGI Electric argues that the RDs conclusion that the costs associated with the Company's planned Operations Center should be denied is in error. UGI Exceptions at 18. The Company noted its original claim for the new Operations Center was \$10.0 million, which was updated to \$17.3 million, with only \$13.4 million to be included in UGI Electric's rate base. *Id.* The Company claimed that the record evidence established that the Operations Center will be in service within the FPFTY even though the Company had not yet entered into specific contracts or agreements associated with the Operations Center. UGI Exceptions at 19.

The RD properly rejected UGI Electric's arguments and properly agreed with OCA that UGI Electric had not sufficiently demonstrated that the new Operations Center will be in operation in the FPFTY. RD at 23-24, *citing* OCA St. 1-S at 2-3. The ALJs found it significant that as of the date of the evidentiary hearing, there was no formal agreement to purchase the property, no contractors had been hired to do the remodeling and site preparations to complete the Operations Center, and that UGI Electric had only recently toured the facilities. *Id.* The ALJs noted that it appears that this new facility is still in the preliminary planning stages and that there is too much uncertainty surrounding the proposed \$17.3 million Operations Center to conclude with reasonable certainty that it will be operational in the FPFTY. *Id.* The Company's arguments not persuasive and the RD's recommendation should be affirmed. The RD properly recommended that UGI

Electric's plant-in-service claim be adjusted to remove the \$17.3 million for the proposed new Operations Center in the FPFTY. *Id.*

3. I&E Reply to UGI Electric Exception No. 3: The Operations Center was properly removed from the Company's plant-in-service claim and no recalculation of the RD's calculation in footnote 4 is necessary. RD at 24.

UGI Electric argues that the RD's calculation of the impact of excluding the Operations Center from rate base is incorrect and overstates the impact on the Company's revenue requirement by \$237,000. UGI Exceptions at 21. UGI Electric notes that the RD's adjustment fails to recognize that the Company provides both transmission and distribution service and that this rate case deals solely with the distribution service. *Id.* Further, the Company argues that even if the Operations Center is excluded from rate base in the Commission's Final Order, the Commission should recalculate the revenue requirement using the correct cost for the portion of the Operations Center that is allocated to the distribution function. *Id.*

First, the RD properly excluded the Operations Center from the Company's FPFTY plant-in-service. Second, the ALJs supported their adjustment to UGI Electric's plant-in-service claim with the calculations included in footnote 4 on the page 24 of the RD. RD at 24, *citing* UGI Electric St. No. 2-RJ at 2. I&E supports the ALJs' calculations in footnote 4. Further, if the Commission affirms that the Operations Center was properly excluded from rate base, then, as noted by UGI Electric, the Commission should adopt the correct rate impact calculation. UGI Exceptions at 23. I&E supports the rate impact calculation included in footnote 4 of the RD rather than the calculation included on page 22 of the UGI Exceptions.

4. I&E Reply to UGI Electric Exception No. 4: The RD properly recommended that UGI Electric refund to customers the 2018 impacts of the TCJA. RD at 105.

UGI Electric argues that the RD erred by recommending that the Company be required to flow back the 2018 impacts of the TCJA to the Company's customers. UGI Exceptions at 23. The Company argues further that the RDs proposed adjustment disregards judicial precedent prohibiting retroactive and single-issue ratemaking except under specified conditions. UGI Exceptions at 23. Further, UGI Electric argued the RD incorrectly failed to conduct any examination of UGI Electric's current earnings and therefore mischaracterizes these tax dollars as a "windfall" for UGI Electric. *Id.*

I&E rejects UGI Electric's arguments. Further, the RD properly recommended that the Company be required to flow back the TCJA tax savings to the UGI Electric customers. RD at 105. UGI Electric's arguments were soundly rejected in the Commission's TCJA Temporary Rates Order (Docket No. M-2018-2641242, Order entered May 17, 2018) where the Commission stated "upon review and consideration of the comments and financial data filed [at Docket No. M-2018-2641242], as well as the Commission's financial analysis of the TCJA tax effects, the Commission is persuaded that the tax savings and associated reductions in utility revenue requirements should be flowed back to consumers on a current basis." Temporary Rates Order at 15. Further, the Commission stated that "the TCJA tax savings represent an extraordinary and substantial, nonrecurring reduction in utility expenses that should be treated outside of a general rate proceeding and flowed back to ratepayers," and therefore, "in the commission's judgment, there is no legal impediment [including retroactive or single-

issue ratemaking] to our present consideration of the substantial tax savings from the TCJA.” Temporary Rates Order at 15. Finally, I&E specifically rejects UGI Electric’s argument that the RD failed to conduct an examination of UGI Electric’s current earnings. UGI Exceptions at 23. To the contrary, I&E witness Joseph Kubas submitted extensive testimony for the ALJs consideration regarding UGI Electric’s attempt to manipulate their Quarterly Earnings Reports which focused a spotlight on the Company’s “alleged” return on equity and earnings versus the Company’s “actual” return on equity and earnings. *See* I&E St. No. 5 at 1-15; I&E St. No. 5-SR at 1-30.

A. The RD properly applied the two-part test applicable to retroactive and single-issue ratemaking. RD at 92-105.

First, UGI Electric argues that single issue ratemaking is generally prohibited where it impacts on a matter normally considered in a base rate case. UGI Exceptions at 23 (*citations omitted*). Then, the Company properly recognizes that the Commission may engage in single-issue ratemaking where the expense at issue is both extraordinary and non-recurring. UGI Exceptions at 24 (*citations omitted*). Next UGI Electric argues in its view, the changes in the federal tax laws resulting from the TCJA are neither extraordinary nor non-recurring. UGI Exceptions at 24. The Company then attempts to make the tortured argument that changes in tax law occur all the time and that Congress regularly amends, extends, and adds to existing tax laws and regulations. *Id.*

Incredulously, the Company then argues that there have been more than 5,900 changes to the Internal Revenue Code from 2001 through 2016 which equates to more than one change per day. *Id.* The Company follows that argument by arguing that even if the

Commission were to find that the TCJA is an extraordinary event, it is simply not a one-time, non-recurring event. *Id.* The Company then uses twisted logic to imply that because the tax law change, effective January 1, 2018, will remain permanently in effect unless and until changed by Congress, that can be interpreted to mean that it is not a one-time non-recurring event. *Id.* Is the Company arguing that every one of the 5,900 edits to the IRS Code or regulations is the equivalent of a one-time 40% cut to the corporate tax rate? Is the Company arguing that there will be a 40% cut to the corporate tax rate every year unless and until Congress changes the law?

I&E rejects UGI Electric's illogical arguments. Further, the RD properly found that regarding the issues of retroactive and single-issue ratemaking, "we [the ALJs] are persuaded that this case fits within the judicial exceptions articulated above [in the RD]." RD at 92-105, *citing* Temporary Rates Order. The RD notes that the 40% reduction in the corporate tax rate in 2017 (effective January 1, 2018) has no precedent in history, and therefore, it is appropriate to characterize this massive tax cut as nothing short of an extraordinary one-time event that is unlikely to be repeated. RD at 103, *citing* Temporary Rates Order. Further, the ALJs noted that based on the language in the Temporary Rates Order, the Commission considered the TCJA to represent such an extraordinary and substantial, non-recurring reduction in utility expenses that it warranted an immediate flowback of the windfall to ratepayers of utility companies that did not presently have a pending base rate case before the commission. RD at 104, *citing* Temporary Rates Order at 15. And because UGI Electric did have a base rate case pending, the ALJs having thoroughly reviewed the relevant evidence in this case, the ALJs concluded that UGI

Electric should also be compelled to flow back the TCJA savings to ratepayers for the same reasons as noted by the Commission in its Temporary Rates Order and those reasons noted by OCA and I&E. RD at 104.

B. The RD considered all the evidence presented regarding the Company's earnings and the RD properly concluded that the 2018 tax overcollections resulting from the TCJA are a windfall to UGI Electric and should be flowed back to ratepayers. RD at 92-105.

UGI Electric argues that the RD ignored controlling precedent that requires the Commission to examine a utility's current earnings before concluding that single issue ratemaking is appropriate. UGI Exceptions at 26 (*citations omitted*). Further, the Company refers to a Commonwealth Court opinion reviewing a previous Commission Order, wherein the Commonwealth Court stated that when examining a change in rates, the PUC must make all findings necessary to determine whether the rates are just and reasonable. UGI Exceptions at 26 (*citations omitted*). Additionally, the Company added that the RD does not find that UGI Electric is overearning under existing rates, nor could it. UGI exceptions at 27. Finally, the Company incorrectly argues that only UGI Electric provided any evidence as to its 2018 earnings and that the evidence demonstrated that UGI Electric is currently earning a far less than fair rate of return in 2018. UGI Exceptions at 28 (*citations omitted*).

I&E rejects the Company's arguments. Further, these arguments were made in UGI Electric's Main and Reply Briefs and properly addressed by the ALJs in the RD. RD at 54-105. And while I&E did not agree with every recommendation in the RD, nevertheless, the RD did address UGI Electric's arguments. Further, the ALJs provided

proof of their thorough analysis of the evidence of record presented by all parties in Table I in the Appendix to the RD. Also, responses to these arguments were provided in I&E's replies to UGI Exceptions No. 4 and 4A *supra*.

Moreover, the Company's argument that only the Company provided evidence as to the Company's 2018 earnings and its argument that it is earning far less than a fair rate of return completely ignores the entirety of I&E's direct and surrebuttal testimony (I&E St. Nos. 1 through 5; I&E St. Nos. 1-SR through 5-SR), which includes the extensive testimony submitted by I&E witness Joseph Kubas. In fact, I&E's final recommendation of a revenue increase of only \$818,000 was based on I&E's comprehensive analysis of UGI Electric's Historic Test Year, Future Test Year, and FPFTY as well as its present and proposed proforma earnings. *See* I&E RB, App. A, Table I. It is inaccurate for the Company to state that only the Company provided evidence as to the Company's 2018 earnings. Also, it seems a little less than credible that the Company can stay out for 22 years and then suddenly come in for a base rate increase and claim that they are under earning.

Furthermore, regarding whether the Company is earning a fair rate of return, as stated many times, I&E witness Joseph Kubas presented extensive testimony regarding UGI Electric's attempts to manipulate their Quarterly Earnings Reports in an effort to represent to the ALJs and the Commission that they were earning a much lower return on equity than they actually were. *See* I&E St. Nos. 5 and 5-SR. I&E reminds the Commission that this is the same testimony to which the Company filed a Motion to

Strike asking the ALJs to either strike the testimony, or if admitted, given little to no weight.

5. I&E Reply to UGI Electric Exception No. 5: The RD properly reduced UGI Electric's rate base to reflect EADIT associated with the TCJA. RD at 90-107.

UGI Electric argues that its revenue requirement in this proceeding properly reflects the amortization of a regulatory liability for EADIT, which represents the change in the Company's ADIT balance resulting from the TCJA's change in the corporate income tax rate from 35% to 21%. UGI Exceptions at 28-29. Further, UGI Electric claims the RD's recommended rate base adjustment is unprecedented, factually wrong, inconsistent and not in the public interest. UGI Exceptions at 29. The Company argues that the RD properly adopted UGI Electric's proposed amortization, but erred when it also deducted the unamortized balance from rate base. UGI Exceptions at 29, *citing* RD at 105-107.

I&E rejects UGI Electric's arguments. Further, the ALJs correctly stated that they agree with the positions adopted by the OCA, I&E, and the OSBA, namely that the excess ADIT should be recognized as an offset to UGI Electric's rate base. RD at 105. The RD properly reviews the positions stated by I&E, OCA, and OSBA and properly concludes that simply changing the name from one account to another does not somehow transform the nature of the monies in the new account. RD at 107, *citing* OCA MB at 43-44, I&E MB at 64-65, and OSBA MB at 14. The RD states further, calling some monies "Excess ADIT" instead of "ADIT" does not change the fact that the money in the original ADIT account was an offset to rate base. RD at 107. Similarly, placing the Excess ADIT

monies into a regulatory liability account does not transform those funds into money that should be included in the rate base. *Id.* These funds were, and continue to be, ADIT funds because that is what the funds were collected for in the first place. *Id.*

Accordingly, the RD states “we cannot allow UGI Electric to hold these excess funds because the future tax liability on these funds is no longer due to the government.” *Id.*

Therefore, the ALJs recommended that the Commission order these funds to be deducted from the rate base to reflect these factors. *Id.* UGI Exception No. 5 should be denied.

6. I&E Reply to UGI Electric Exception No. 6: The RD’s proper rejection of the Company’s claimed costs associated with UGI Electric’s incentive compensation program is supported by the record evidence. RD at 47-50.

UGI Electric argues that the RD’s determination that expenses totaling \$187,000 associated with the Company’s incentive compensation program should be excluded from rates is in error. UGI Exceptions at 31. The Company notes that the RD concluded that the Company’s incentive compensation program is “designed to give incentives to high-level employees who are not proximately responsible for serving its customers” and that UGI Electric’s program is focused on financial metrics rather than operational metrics. UGI Exceptions at 31, *quoting* RD at 50. The Company then incorrectly asserts that the conclusions drawn in the RD regarding UGI Electric’s incentive compensation program do not align with the evidence presented in the record. UGI Exceptions at 31. Finally, UGI Electric argued that is critical to note that the UGI Electric employees who are eligible to receive incentive compensation are not “high-level employees who are not proximately responsible for serving its customers.” *Id.*

I&E rejects the Company's arguments. Further, the RD properly concludes that with respect to UGI Electric's incentive compensation program, the program is designed to give incentives to high-level employees who are not proximately responsible for serving customers. RD at 50. The ALJs found that the program appears to focus more on awarding executives for the *financial* success of the Company instead of the *operational* success of the Company. *Id.* (*emphasis added*). The ALJs correctly recommend that the Commission disallow UGI Electric's claim to recover costs associated with the Allocated Stock Options, and the Restricted Stock Awards in its entirety. *Id.* Further, the RD noted that although the Company states that the Company's management employees have goals that include metrics which are not specifically tied to financial performance; that statement is in direct contradiction to the statements made by UGI Electric witness Megan Mattern during cross examination where she stated "for the cash bonus component, there are non-financial metrics built in; but the stock components are primarily based on financial metrics to determine actual payout." RD at 48-49, *quoting* Tr. at 109-110. Finally, the RD recognizes that in *PA PUC v. Roaring Creek Water Company* the Commission found that the incentive compensation program was not aimed at enhancing the productivity and efficiency of the utility and thus the program cost was excluded from operating expenses. RD at 49, *citing PA PUC v. Roaring Creek Water Company*, 81 PA PUC 285 (1994). The RD correctly applied the applicable case law and test for incentive compensation plans and therefore UGI Exception No. 6 should be denied.

7. I&E Reply to UGI Electric Exception No. 7: The RD properly recommended that the Commission disallow the environmental remediation expense claim related to the Forty Fort site in its entirety and accept the \$139,000 adjustment to the Company's claimed O&M expense. RD at 36.

UGI Electric argues that the RD denied the environmental remediation expenses by reaching outside the FPFTY to offset the expenses with proceeds from the potential sale of the underlying property. UGI Exceptions at 34, *citing* RD at 36. UGI Electric notes that specifically, the RD concluded “with remediation, the value of the property will certainly increase, increasing the gain that UGI Electric will receive from selling the property.” UGI Exceptions at 34, *quoting* RD at 36. The Company then argues that the RD's conclusion ignores precedent addressing proceeds from the sale of property, as well as improperly reaching outside of the FPFTY in order to include speculative gains that may be associated with the sale. UGI Exceptions at 34. I&E notes that the Company recognizes that conveniently the Company projected the environmental remediation expense to be incurred inside the FPFTY, while at the same time conveniently projecting the sale of the property to take place outside the FPFTY. UGI Exceptions at 35. These facts evidence that the Company has complete control over when the projected remediation (inside the FPFTY) and the projected sale of the property (outside the FPFTY) are proposed to take place; and, the proposed timing of both conveniently offers maximum benefit to the Company (if the Company's arguments are accepted).

I&E rejects the Company's arguments. Further, the ALJs properly noted that, agreeing with the OCA, the ALJs believe the expenses that will be related to the remediation of the Forty Fort site can be recovered from the sales proceeds of the

associated property. RD at 35-36, *citing* OCA St. 1 at 16-17; OCA St. 1S at 5. The RD notes it is appropriate to recover the costs of the remediation from the sales proceeds rather than to pass the cost on to ratepayers. *Id.* With remediation the value of the property will certainly increase, increasing the gain that UGI Electric will receive from selling the property. *Id.* Thus, there is an obvious connection between remediation and the value of the eventual sale of property. *Id.* Finally, the RD correctly recognizes that I&E ultimately concurred with the position proffered by OCA as presented by OCA witness Lafayette Morgan. RD at 36. *See* I&E MB at 42.

8. I&E Reply to UGI Electric Exception No. 8: The RD properly recommended that the Commission adopt a five-year (60 month) normalization of the Company's rate case expense. RD at 40-41.

UGI Electric argues that the RD improperly adopted I&E's adjustment to rate case expense, which rejected the Company's use of a three-year (36 months) normalization in favor of the five-year (60 month) normalization proposed by I&E. UGI Exceptions at 36, *citing* RD at 40-41. The Company notes that the RD concluded that while history is not the sole determinant to be relied upon in assessing the appropriate normalization period, UGI Electric provided no basis for the use of its three-year normalization. UGI Exceptions at 36, *citing* RD at 40. The Company then argues that the RD failed to consider the evidence UGI Electric presented regarding its ongoing commitment to capital improvements. UGI Exceptions at 36. Further, the Company argued, particularly, the RD does not consider the impact of the Company's Long-Term Infrastructure Improvement Plan which will add \$24.4 million to rate base over the three years after the FPFTY. *Id.*

I&E rejects the Company's arguments. Further, the RD properly recommends that the Commission adopt UGI Electric's rate case expense claim in the amount of \$676,000 to be normalized over I&E's recommended normalization period of five years (60 months). *See* RD at 40-41. The ALJs correctly reasoned that with respect to UGI Electric's argument that history is not the sole basis to determine normalization of the rate case expense, substantial evidence does not exist to support UGI Electric's suggestion that it will, from this point forward, file base rate cases every three years because of its major capital investment program. RD at 38-40, *citing* I&E St. No. 1 at 11; I&E St. No. 1-SR at 7-9. Additionally, the RD states that UGI Electric cited the *PPL* 2012 Order to surmise that the Commission may move away from using history of rate case filings to determine the normalization of the rate case expense, but the facts presented in this present case differ from the *PPL* 2012 Order because UGI Electric has not filed a base rate case and 22 years. RD at 40. Further, the RD notes, I&E's recommendation, which is based on a consideration of all cases filed by UGI Electric since 1992, is a fair recommendation given that consideration of the history of UGI Electric's base rate increases could have led to a recommendation of a 22-year normalization period. *Id.*

9. I&E Reply to UGI Electric Exception No. 9: I&E also excepted to the RD's recommendation that customer charges and usage rates should be scaled back proportionally to the percent increase originally requested. RD at 130-131. *See also* I&E Exception No. 19.

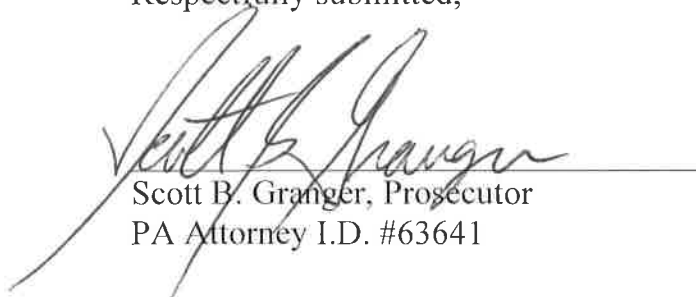
Both I&E and UGI Electric except to the RD's recommendation that the Commission should reduce the customer charges and the usage rates proportionally to the

percent increase originally requested. UGI Exceptions at 37. *See also* I&E Exception No. 19. UGI Electric recommends the Commission adopt UGI Electric's scale back proposal and have any reduction first applied to any proposed increase to usage charges, then to any proposed increase to demand charges, and then finally to any proposed increase to customer charges. UGI Exceptions at 38-39. I&E argues the scale back of any rate increase granted by the Commission that is less than the Company's proposed requested revenue increase should first scale back usage rates prior to any scale back of the customer charge; and, any scale back methodology used should be based upon the customer charges ultimately granted by the Commission, noting that I&E recommends a residential customer charge of \$10.00 per month. *See* I&E Exceptions No. 19 at 32-33.

III. CONCLUSION.

I&E respectfully requests that the Commission deny UGI Electric's Exceptions and grant the I&E Exceptions; and, that the Administrative Law Judges' Recommended Decision be reversed or modified consistent with the I&E Exceptions.

Respectfully submitted,



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Dated: September 24, 2018