COMMONWEALTH OF PENNSYLVANIA

September 24, 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 Reply Exceptions, 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

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

REPLY EXCEPTIONS ON BEHALF OF THE OFFICE OF SMALL BUSINESS ADVOCATE

Steven C. Gray
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Attorney ID No. 77538

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
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Date: September 24, 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").

On September 13, 2018, the OSBA filed an Exception to the RD. The Company, the Office of Consumer Advocate ("OCA") and the Bureau of Investigation and Enforcement ("BOIE") also filed Exceptions.

The OSBA submits the following Reply Exceptions in response to the Exceptions filed by the Company and the OCA.

II. Reply Exceptions

A. Reply to UGI Electric Exception No. 5: The ALJs properly recommended the reduction of the Company's rate base to reflect Excess ADIT associated with the TCJA. (UGI Electric Exceptions, at 28-30)

The OSBA explained that excess accumulated deferred income taxes ("EADIT") is simply a recategorization of an ADIT balance that results from the Tax Cut and Jobs Act ("TCJA"). *OSBA Main Brief*, at 12-16; *OSBA Reply Brief*, at 5-9. The ALJs correctly determined that it should continue to be treated as an offset to rate base. RD, at 105-106.

UGI Electric offered four arguments as to why EADIT resulting from the TCJA should not be subject to the same regulatory treatment as ADIT:

- EADIT is an accumulated expense that is being amortized, and the Commission does not allow accumulated expenses to attract a return;
- Most of UGI Electric's EADIT is related to plant placed into service after the Company's most recent base rates proceeding in 1996;
- The RD reflects only the rate reduction impacts of TCJA and fails to reflect "the increase in rate base that should result from the reduction in ADIT;" and
- Applying EADIT as an offset to rate base is inconsistent with the goals of TCJA and not in the public interest.

UGI Electric Exceptions, at 29.

The second argument is specific to UGI Electric and adopting the Company's argument on this issue would bring about results that would vary from utility to utility. The other arguments are general in nature and, if adopted by the Commission, would presumably apply to all other utilities in Pennsylvania.

1. EADIT is Not an Unamortized Expense

The Company's first argument is that EADIT is not ADIT but is simply an unamortized expense (in this case, a negative expense), and that Commission policy does not assign a return to these accounts. This argument fails because it is based on the premise that the EADIT balance is more analogous to an unamortized expense amount than to ADIT. Simple common sense refutes this conclusion.

Differences between the timing of cash receipts and cash payments create financing costs and benefits. Regulators treat different types of timing effects differently. For example, some unamortized expense accounts do not attract any financing costs, some accounts such as variance accounts for purchased gas costs attract interest costs, working capital accounts, and ADIT attract financing costs at the utility's weighted average cost of capital. The question before the Commission is with which category EADIT balances are most similar. *OSBA Reply Brief*, at 7-8.

Both ADIT and EADIT are balances reflecting tax costs included in rates but not paid out by the Company. The only difference between ADIT and EADIT is: ADIT represents the balance of taxes included in rates that the Company will eventually need to pay to the government; and EADIT represents the balance of taxes included in rates but which will no longer need to be paid to the government because of the TCJA and will be refunded to ratepayers.

However, ADIT and EADIT are the same in that they represent taxes which have been paid by ratepayers, but which have not been paid to the government or refunded to customers.

It could, of course, be argued that all account balances related to cash flow timing issues (*e.g.*, ADIT, working capital, PGC variances, EE&C variances, regulatory assets for extreme

weather) should be treated in the same manner for regulatory purposes. However, it is well established that this is *not* the case. The question at issue, therefore, becomes whether EADIT is more similar to ADIT, or whether it is more similar to an unamortized expense account.

Given the obvious and close parallels between ADIT and EADIT, and the substantial differences between unamortized expense and EADIT, the OSBA respectfully submits that regulatory treatment of EADIT should parallel that for ADIT. The circumstances which give rise to EADIT are identical to those which give rise to ADIT, and it is therefore logical to treat the two balances consistently. The RD sensibly reaches this conclusion. RD, at 107.

2. That the Company has accumulated most of its ADIT and EADIT since its last base rates case is neither a relevant nor an appropriate consideration for establishing the proper ratemaking treatment for EADIT.

UGI Electric argued that EADIT should not be an offset to rate base because most of the ADIT was accumulated after the Company's last base rate case and was therefore allegedly never reflected in rates. *UGI Electric Exceptions*, at 29.

The most obvious flaw in this line of reasoning is that it would apply equally well to both EADIT *and* ADIT. Thus, if the Commission were to adopt this line of reasoning, it would similarly need to modify its longstanding policy for ADIT.

Moreover, if the Commission adopts this UGI Electric-specific argument, it would then need to evaluate every ADIT and EADIT offset in every utility base rate case from this case forward (based on the specific circumstances of each particular utility) to understand when the ADIT was accumulated relative to the most recent base rate proceeding. Adopting the Company's position would therefore create a regulatory quagmire.

Finally, the premise that ADIT which accumulated after the most recent base rates proceeding does not reflect taxes actually paid by ratepayers is flawed. The rates charged by

UGI Electric in every year implicitly reflected the impact of both the 35 percent statutory tax rate and ADIT. Thus, in every year that UGI Electric made an affirmative decision not to file a base rates case, the Company understood how corporate taxes would be reflected in rates. *OSBA Main Brief*, at 15-16; *OSBA Reply Brief*, at 8.

Consequently, accepting the Company's argument that EADIT (and implicitly ADIT) should reflect the relative timing of ADIT accumulation and the most recent base rates proceeding is logically flawed, it is inconsistent with regulatory practice for ADIT, and it would create regulatory havoc. UGI Electric's argument should be rejected.

3. OCA and I&E have not ignored the rate increasing effects of reduced ADIT in their recommended ratemaking treatment for EADIT.

UGI Electric's third argument appears to be based on the view that the OCA and BOIE are ignoring the rate increasing impact of reduced ADIT in their analyses.

The Company has, at least implicitly, been charging ratepayers for corporate income tax at a 35 percent statutory rate for many years, while actually paying taxes at a lower rate. This has provided UGI Electric with cash to finance its business in the amount of the ADIT. Normal regulatory policy therefore recognizes the benefit of this "free financing" by applying ADIT as an offset to rate base. In effect, this rate base offset implies that the Company pays for this financing at its weighted average cost of capital. *OSBA Reply Brief*, at 6.

The TCJA has two primary effects. First, it lowers the statutory tax rate going forward, thereby lowering the Company's overall cost of providing service. Second, the TCJA reduces the future taxes that the Company will have to pay, thereby lowering its ADIT liability. Neither of these effects alters the amount of the financing that ratepayers have provided to the Company. Whether that extra cash may eventually need to be paid to the government, or whether that extra

cash can be eventually refunded to ratepayers, it is still "free financing" unless and until it is applied as a credit to rate base.

Thus, the OCA and BOIE positions do not ignore the rate increasing effect of lower ADIT because the TCJA does not affect the implicit financing that has already been provided by ratepayers to the Company prior to its passage. The Company's argument to the contrary is simply wrong. *OSBA Reply Brief*, at 8-9.

4. Treating EADIT as an offset to rate base is not inconsistent with the intent of TCJA and is consistent with the Commission's long-standing treatment of rate-of-return regulated utilities.

UGI Electric's fourth argument is that the TCJA was intended to encourage more investment, but that crediting EADIT to rate base will cause a reduction of the "interest free loan" associated with ADIT, thereby forcing the Company to rely more heavily on capital markets. *UGI Electric Exceptions*, at 29.

UGI Electric is correct in that a reduction in the statutory corporate tax rate will reduce the amount the Company finances through ADIT going forward, but ADIT financing is not free. As explained above, the rate base offset from ADIT implies that the financing cost is the Company's weighted average cost of capital. The Company has made no demonstration that it is unable to obtain market financing for its additional capital spending at that rate. *OSBA Reply Brief*, at 6.

Moreover, UGI Electric is not a cash-flow regulated utility. It is entitled to a return of and on invested capital. It has no legal entitlement to some specific level of ratepayer financing through ADIT or EADIT, free or otherwise. *OSBA Reply Brief*, at 9.

Finally, the going forward impact of lower ADIT on the Company's financing has no relevance to the issue of existing ADIT and EADIT balances. These balances represent

financing that has been provided by ratepayers in the past, and these balances should continue to be repaid, with interest at the Company's cost of capital. *OSBA Reply Brief*, at 9.

B. Reply to OCA Exception No. 9: The ALJs properly recommended the adoption of the Company's cost of service study in this proceeding instead of the OCA cost of service study. (OCA Exceptions, at 18-31)

In its Exceptions, the OCA argued that the ALJs improperly recommended that PPL's cost of service study ("COSS") be used for the purposes of this proceeding. The OCA argued:

> The OCA submits that the ALJs erred by recommending the adoption of UGI's COSS in this matter and that that [sic] the Commission should consider the OCA's alternative study as a guide when setting rates in this proceeding.

OCA Exceptions, at 24.

As a threshold matter, and with due respect to the OCA's advocacy on this issue, the OSBA submits that this is not the case in which to change COSS methodologies, notably with respect to the classification and allocation of joint use distribution plant. Use of the "minimum system" method for cost classification was substantially litigated in several recent PPL Electric proceedings, and the Commission established a clear preference for that method. UGI Electric Statement No. 6-R, at 4-5. OSBA witness Robert D. Knecht pointed out that changes in COSS methodology can have a major impact on costs allocated to the Company's customer classes. OSBA Statement No. 1-R, at 3. Changes in COSS methodology typically affect the larger industrial, small commercial, and residential customers the most. *Id.* The OCA's own Table 1-S chart confirms Mr. Knecht's analysis:

Table 1-S. Comparison of Allocated Cost of Service Study Results				
	Company		**OCA**	
Rate Class	**Rate of Return**	**Index**	**Rate of Return**	**Index**
Residential	(0.54%)	(0.14)	0.97%	0.26
General Service- I	(0.59)	(0.16)	3.78	1.01
General Service-4	23.23	6.19	13.87	3.70
Large Power	16.20	4.32	5.56	1.48
Lighting	21.02	5.61	17.33	4.62
Total:	**3.75°/41**	**1.00**	**3.75%**	**1.00**

OCA Exceptions, at 28.

In light of the impact on UGI Electric's various customer classes, Mr. Knecht testified, as follows:

> [I]n this proceeding, larger commercial and industrial customers are not represented by counsel or expert witnesses. In contrast, in the PPL Electric proceedings at Dockets No. R-2010-2161694 and R-2012-2290597, industrial customers were represented by both counsel and an independent expert, who generally supported the use of the minimum system classification method. As such, establishing a precedent in favor of an alternative method in this proceeding would likely have an impact on customer groups that are not represented in this proceeding.

OSBA Statement 1-R, at 4 (footnote omitted).

The OSBA respectfully submits that if the Commission wants to consider rejecting UGI Electric's COSS methodology and adopting the OCA's alternative methodology, the instant proceeding is not the case to do so.

Substantively, the OCA argued:

> UGI's COSS contains several flaws that make it unsuitable to rely upon as a guide to setting rates in this matter. The OCA's proposed COSS more accurately follows the principles of cost causation and is consistent with noted treatises on this issue and consistent with the common practice of more than 30 other

> states. Further, even if the general parameters of UGI's COSS are accepted here, there are adjustments that must be made as UGI has failed to reasonably account for the load carrying capability of its "minimum system" and has also failed to reasonably account for the discrepancies in the actual length of facilities used to serve its customers.

OCA Exceptions, at 23.

The Rebuttal Testimony of OSBA witness Robert D. Knecht contains a detailed response to the OCA's proposed COSS methodology. OSBA Statement No. 1-R, at 1-10. In addition, UGI Electric witness John Taylor provided extensive rebuttal and rejoinder testimony opposing the OCA's recommended COSS methodology. UGI Electric Statement No. 6-R, at 3-18; UGI Electric Statement No. 6-RJ, at 3-8. In the interest of judicial economy, the OSBA will highlight the arguments made by the parties.

The OCA stated:

> The major difference between the OCA and UGI as to its COSSs is that UGI includes a customer component to its upstream primary and secondary distribution plant, and OCA witness Mierzwa testified that such distribution plant should be classified as 100% demand related.

OCA Exceptions, at 25.

Mr. Knecht responded, as follows:

> Of the methods in common use for classifying and allocating joint-use distribution plant among rate classes, none is perfect. The problem of assigning electric distribution system costs to individual customers or even customer classes cannot be accurately addressed using broad assumptions and relatively simple mathematical formulae.
>
> * * *
>
> Various simple and demonstrably imperfect methods have been developed for attempting to address these factors, and the relative merits of each methodology have been debated *ad nauseum*. One of these methods is that advanced by Mr.

> Mierzwa in this proceeding, namely pretending that there are no economies of scale to serve larger customers within the distribution system, and simply allocating all costs based on customer demands. Another method is the 'minimum system' method used in the Company's [COSS], in which a portion of costs are deemed to be proportional to customer count based on a theoretical system made up of minimum capacity equipment. By allocating some costs based on customer count and some costs based on peak load, such a method attempts to recognize the lower unit costs of serving larger customers.
>
> * * *
>
> In the end, this debate is typically addressed by the regulator establishing a precedent for which method it finds best, and then revisiting that decision infrequently.

OSBA Statement No. 1-R, at 1-3. The Commission approved the "minimum system" COSS methodology in two recent PPL Electric base rates cases. *Id.*, at 3. The OSBA acknowledges that the Commission's recent cost allocation decisions for other utilities are not necessarily dispositive of this issue. Cost causation considerations may be different for UGI Electric, or the Commission may simply have changed its mind with respect to a long-standing precedent. The OSBA observes, however, that the OCA made no argument as to whether UGI Electric has different cost causation characteristics from PPL, nor does OCA offer any new or novel arguments as to why long-standing precedent should be reversed in this proceeding.

UGI electric witness Mr. Taylor similarly argued that Commission precedent strongly favors the inclusion of a customer component of costs in electric distribution company cost allocation analyses. Mr. Taylor also observes that "every Pennsylvania electric utility classifies a portion of these upstream distribution facilities as partially customer-related." UGI Electric Statement No. 6-R, at 4.

The OCA also argued, as follows:

> In determining that there is a customer component to primary and secondary distribution plant, UGI used a 'minimum system' approach. Even if it is determined that some portion of primary and secondary distribution plant is customer related, UGI's minimum system is flawed. UGI's alleged 'minimum system' is a hypothetical construct – it does not actually exist beyond the realm of theory, and it does not represent the way that the system is actually used in the day-to-day operations of the electric grid. Here, the fallacy in UGI's minimum system approach is that it does indeed have load carrying capability, in direct contravention of the very reason that such a hypothetical construct would be employed – in order to show a customer component through connection only to the grid with no actual usage or load placed on the system.

OCA Exceptions, at 28.

Mr. Knecht responded to the OCA, as follows:

> Mr. Mierzwa is also correct that some regulators require utilities to make an adjustment to demand allocation factors to reflect the load-carrying capability of the minimum system. However, the load carrying capability of a minimum system has no practical meaning. Obviously, the minimum system is capable of serving the entire load for a small residential or a small commercial customer in the immediate area surrounding the customer. However, if UGI Electric were to replace all of its major primary system feeders with the smallest poles and lowest capacity conductors, the system would be able to serve only a very small portion of the load of hundreds or possibly thousands of the customers downstream from those lines. It is therefore highly problematic to develop a sensible method for defining the load carrying capability of the minimum system. Moreover, in this proceeding, Mr. Mierzwa has not attempted to do so.

OSBA Statement No. 1-R, at 6-7.

Mr. Taylor responded that the adjustments for the load carrying capability of the minimum system that were used in the PPL Electric COSS methodology (that was extensively litigated) were also applied in the UGI Electric COSS. UGI Electric Statement

No. 6-RJ, at 6.

In addition, the OCA argued:

> As part of its minimum system study, UGI allocated approximately 30 percent of its primary distribution system based on the number of customers connected to it. Mr. Mierzwa testified that such a process creates a misallocation of costs.

OCA Exceptions, at 30 (citation omitted).

Mr. Knecht responded, as follows:

> The distribution system must be expanded to serve new customers, and, in many cases, the cost is not dependent on the size of the customer. Expanding the system to serve, say, a 3 kW GS-1 customer is likely to be comparable to expanding the system to serve a similarly situated 5 kW Residential customer. Moreover, the conceptual framework of classifying costs into demand-related and customer-related components is intended to address the basic economic issue that smaller customers are more spread out and cost more per kW to serve in terms of poles, conductors and transformers than do larger customers.
>
> * * *
>
> From a common sense perspective, it is reasonable to conclude that it costs more for poles, conductors, conduit and transformers to serve 50 residential customers, each with 5 kW in maximum demand, than to serve one medium sized commercial customer with 250 kW of maximum demand. The 50 residential customers are likely spread over a wide geographic area, whereas the commercial customer can be served at a single location. Moreover, the costs for the distribution equipment located nearest to the individual customers exhibits economies of scale, in that unit costs decrease as customer size increases (e.g., transformers). It is both of these types of economies for serving larger customers that the various classification methods are conceptually designed to address.
>
> It is also true that the alternative methods and assumptions within the various methods which split costs into customer-related and demand-related components can produce widely varying results. However, at the end of the day, the method that

> Mr. Mierzwa favors lies outside of the range of results that could be obtained by applying various different minimum system and zero-intercept methodologies. Thus, while the various approaches will provide different estimates of the underlying economies of scale, this variability does not justify Mr. Mierzwa's proposal to ignore the underlying economics of electric distribution systems entirely.

OSBA Statement No. 1-R, at 4-5.

The OSBA is certain that the Commission is well-aware that each of the various COSS methodologies has its advantages and disadvantages. If the Commission wants an extensive review of the COSS methodologies at issue in the instant proceeding, it should look no further than the testimony of OCA witness Mierzwa, the testimony of OSBA witness Knecht, and the testimony of UGI Electric witness Taylor.

Even if, *arguendo*, the Commission determines that the Company's minimum system method for classifying joint use distribution plant is not a theoretically perfect cost allocation approach, the OSBA submits that this is not the case for the Commission to adopt the OCA COSS methodology. Not only are the industrial customers not represented, but, as is well known, UGI Electric is a small electric distribution company which took decades to file the instant base rate case. If a radical overhaul of Commission precedent with respect to electric distribution company cost allocation is contemplated, the issue would be better addressed in a different proceeding with all stakeholders represented.

C. Reply to OCA Exception No. 10: The ALJs properly recommended the adoption of the Company's revenue allocation instead of the OCA revenue allocation. (OCA Exceptions, at 32-24)

The OCA excepted to the RD's recommendation to adopt the Company's revenue allocation, claiming that the Company's revenue allocation is based on a flawed COSS and fails to reflect gradualism. In the alternative, OCA recommended that the revenue allocation

advanced by Mr. Mierzwa be adopted. Mr. Mierzwa's recommendation relies on the OCA COSS and Mr. Mierzwa's interpretation of the gradualism criteria.

For the reasons addressed above, the OCA COSS methodology is inconsistent with both cost causation and Commission precedent. For those reasons alone, the OCA revenue allocation proposal should be rejected.

However, the OSBA respectfully submits that the Company's revenue allocation is consistent with the principle of rate gradualism, particularly in this proceeding. Mr. Knecht addressed the issue, as follows:

> There are no hard-and-fast rules for determining what kind of rate increase would violate the principle of gradualism. One common metric used recently by experts in Pennsylvania has been the 1.5X rule, wherein the maximum average rate increase for any particular class should not exceed 1.5 times the system average increase. In this case, the Company's proposal for the Residential class is a little above that, with a 1.66 factor (39.9% over 24.1%). However, in this case, it should also be recognized that the Company has not had a base rates proceeding since 1996, and thus the Residential class has almost certainly been subsidized over that entire period. In that light, I do not consider the Company's proposal to be unreasonable.

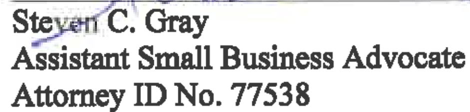
OSBA Statement No. 1, at 19-20.

The OSBA submits that the ALJs properly accepted UGI Electric's proposed revenue allocation over the alternative OCA approach. The Company's proposal is grounded in a COSS that is consistent with Commission precedent and cost causation principles and is not inconsistent with the principle of rate gradualism.

III. Conclusion

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny Company Exception No. 5, OCA Exception No. 9, and OCA Exception No. 10.

Respectfully submitted,



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Dated: September 24, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	**Docket No. R-2017-2640058**
	:	**Docket No. C-2018-2647268**
UGI Utilities, Inc. – Electric Division	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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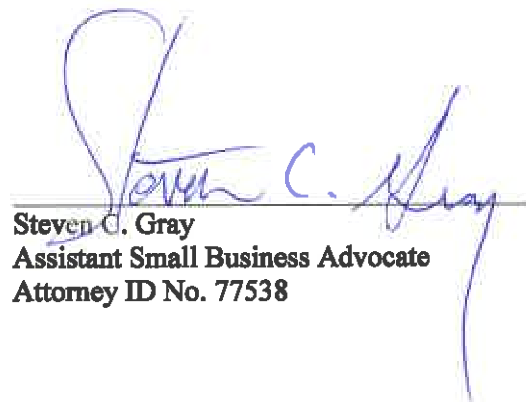
DATE: September 24, 2018



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