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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held February 7, 2019 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman  David W. Sweet, Vice Chairman  Norman J. Kennard  Andrew G. Place | |  | |
| John F. Coleman, Jr. | |  | |
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| Petition of UGI Utilities, Inc. – Gas Division for Rescission or Amendment of Ordering Paragraph No. 6 of the Commission’s Opinion and Order Entered November 9, 2016 | Docket No. P-2013-2398833 | |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration is the Petition of UGI Utilities, Inc. – Gas Division (UGI-GD or the Company) for Rescission or Amendment of Ordering Paragraph No. 6 of the Commission’s Opinion and Order Entered November 9, 2016 (Petition). That Order, at the above-captioned docket, approved with conditions UGI-GD’s Petition for Approval of a Distribution System Improvement Charge (November 9, 2016 Order).

**Background And Procedural History**

UGI-GD is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. UGI-GD is in the business of selling and distributing natural gas to retail customers within the Commonwealth and is therefore a “public utility” within the meaning of Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Pennsylvania Public Utility Commission (Commission). UGI-GD provides natural gas service to approximately 379,000 residential, commercial, and industrial customers in Eastern and Central Pennsylvania. UGI-GD provides service through approximately 5,700 miles of mains that it owns, operates, and maintains.[[1]](#footnote-1)

On December 12, 2013, UGI-GD filed a petition with the Commission seeking approval of its Long-Term Infrastructure Improvement Plan (LTIIP). The Company’s LTIIP was approved by the Commission on July 9, 2014. On February 29, 2016, UGI-GD filed a petition to modify its exiting LTIIP. The Company’s Modified LTIIP was approved by the Commission on June 30, 2016.[[2]](#footnote-2)

On March 31, 2016, UGI-GD filed a petition to establish and implement a distribution system improvement charge (DSIC). The Commission entered an Order approving, with conditions, UGI-GD’s DSIC Petition on November 9, 2016. The Order comprises six numbered Ordering Paragraphs, only one of which—Ordering Paragraph No. 6—is the subject of UGI-GD’s instant Petition. That paragraph requires UGI-GD (1) to “provide the estimated number of anticipated new jobs to be created for specific replacement projects with its revised initial DSIC tariff” and (2) to “track such employment information and provide the actual numbers of jobs created to the Commission by January 31st of each year.”[[3]](#footnote-3)

On January 13, 2017, UGI-GD filed, pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), the instant Petition for Rescission or Amendment. With this Petition, UGI-GD seeks to have Ordering Paragraph No. 6 either (1) modified with respect to the January 31st deadline for filing job creation data or (2) rescinded outright.[[4]](#footnote-4) No comments or other replies were filed in response to UGI’s Petition.

**UGI-GD’s Petition For Rescission Or Amendment**

UGI-GD seeks to have Ordering Paragraph No. 6 either (1) modified with respect to the January 31st deadline for filing data on the actual number of jobs created or (2) rescinded outright. It does not appear that UGI objects to the first part of Ordering Paragraph No. 6—the requirement to provide an estimate of the number of jobs to be created with its revised initial DSIC tariff—however, UGI-GD clearly requests to have the second part of the paragraph modified or rescinded.[[5]](#footnote-5) Further, UGI-GD notes that, while the Company has no objection to producing the jobs data at issue, no party to the DSIC proceeding requested it.[[6]](#footnote-6)

Specifically, UGI-GD is requesting that part two of Ordering Paragraph No. 6 be modified so that the Company can include the job creation data in its Annual Asset Optimization Plan (AAOP), rather than in a separate filing due by January 31st of each year. According to UGI-GD’s Petition, its AAOP must be filed with the Commission by March 1st every year. UGI asserts that allowing it to provide the requested jobs data in its AAOP will be more convenient for both the Commission and UGI, and that the short delay in receiving the data—from January 31 to March 1—will not negatively impact the Commission’s ability to review and use the information. In fact, UGI-GD believes that providing the requested jobs data with its AAOP, considering the other data provided in the AAOP, will benefit the Commission by providing important context for analyzing that data. In the alternative, UGI-GD is requesting that the job creation data reporting requirement be rescinded entirely.[[7]](#footnote-7)

**Discussion**

Pursuant to 66 Pa. C.S. § 703(g), UGI-GD requests modification to or outright rescission of Ordering Paragraph No. 6 of the Commission’s Opinion and Order Entered November 9, 2016, approving the Company’s DSIC. That paragraph requires UGI-GD to track the number of jobs created through the Company’s DSIC-eligible infrastructure improvement projects and to report that information to the Commission by January 31st of each year. UGI-GD does not object to providing the jobs data requested by the Commission; however, the Company requests that the reporting deadline be moved to March 1st so that the data can be provided along with UGI-GD’s AAOP filing.

A utility with an approved DSIC and LTIIP must file an AAOP annually with the Commission within 60 days of the end of its LTIIP year. *See* 66 Pa. C.S. § 1356 and 52 Pa. Code § 121.6. The AAOP must include information on (1) the property repaired, improved, and replaced in the last 12 months pursuant to the prior year’s AAOP and (2) the property to be improved over the next 12 months. *Id*.

A utility’s petition for a DSIC must include, among other specifically prescribed items, any additional information required by the Commission. 66 Pa. C.S. § 1353(b)(6). As such, the Commission has the authority to require UGI-GD to provide with its revised initial DSIC tariff an estimate of the number of new jobs to be created as part of specific infrastructure improvement projects.

Also, the Commission can modify a utility’s DSIC petition, 66 Pa. C.S. § 1355, and it has the general authority to require a utility to file special reports as the Commission may prescribe, 66 Pa. C.S. § 504. As such, the Commission has the authority to require UGI-GD to report by January 31st of each year the actual number of jobs created as part of specific infrastructure improvement projects.

Even though the job creation data at issue was not requested by any party to UGI-GD’s DSIC proceeding, and even though no law or regulation expressly requires UGI-GD to provide such job creation data as part of a DSIC proceeding, the Commission has broad power to require that the Company provide such data.

With respect to a petition for rescission or amendment of an order under 66 Pa. C.S. § 703(g), the Commission has administrative discretion regarding whether to grant or deny such a request. *West Penn Power Co. v. Public Util. Comm’n.*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). Since that means the Commission’s ruling on a petition for rescission or amendment will not be overturned by an appellate court absent a showing that the Commission abused its discretion, the Commission has wide latitude to deny such a petition. *Id*.

**Conclusion**

Although the Commission (1) has the statutory authority to require UGI-GD to provide the job creation data requested in Ordering Paragraph No. 6 and (2) has broad discretion to deny UGI-GD’s request for modification or rescission of Ordering Paragraph No. 6, the Commission’s interests will not be harmed by granting UGI-GD’s request to modify the order. As such, the Commission will grant UGI-GD’s request to amend Ordering Paragraph No. 6 but will deny the Company’s request to rescind the paragraph in its entirety. UGI-GD will be permitted to provide the required job creation data to the Commission along with its AAOP, which is due by March 1st of each year, instead of in a separate filing due by January 31st of each year. **THEREFORE,**

**IT IS ORDERED:**

1. That UGI Utilities, Inc. – Gas Division’s Petition for Rescission or Amendment of Ordering Paragraph No. 6 of the Commission’s Opinion and Order Entered November 9, 2016 is granted in part and denied in part, consistent with this Order.

2. That UGI Utilities, Inc. – Gas Division’s request to amend Ordering Paragraph No. 6 of the Commission’s Opinion and Order of November 9, 2016 is granted. Ordering Paragraph No. 6 will now read as follows:

That UGI Utilities, Inc. – Gas Division shall provide the estimated number of anticipated new jobs to be created for specific replacement projects with its revised initial DSIC tariff. Additionally, UGI Utilities, Inc. – Gas Division shall track such employment information and provide the actual numbers of jobs created to the Commission with its AAOP by March 1st of each year.

3. That UGI Utilities, Inc. – Gas Division’s request to rescind Ordering Paragraph No. 6 is denied.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 7, 2019

ORDER ENTERED: February 7, 2019

1. Petition at 1 (¶ 1). [↑](#footnote-ref-1)
2. November 9, 2016 Order at 2. [↑](#footnote-ref-2)
3. Petition at 2-3 (¶¶ 4-6) and November 9, 2016 Order at 2, 22-23. [↑](#footnote-ref-3)
4. Petition at 4 (¶ 8). [↑](#footnote-ref-4)
5. Petition at 4 (¶¶ 8 & 10). [↑](#footnote-ref-5)
6. Petition at 3 (¶ 6). [↑](#footnote-ref-6)
7. Petition at 4 (¶¶ 8-11). [↑](#footnote-ref-7)