


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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September 24, 2019

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

Re: Petition of UGI Utilities, Inc. – Electric
Division for Approval of a Distribution
System Improvement Charge
Docket No. P-2017-2619834

Dear Secretary Chiavetta:

Attached for electronic filing, please find a CORRECTED cover letter and Certificate of Service. On September 23, 2019, the Office of Consumer Advocate (OCA) filed an Answer and Verification in the above-captioned proceeding. The cover letter and Certificate of Service that were enclosed with the Answer and Verification stated incorrectly that the Answer responded to a Petition for Waiver of the Distribution System Improvement Charge Cap. The attached cover letter and Certificate of Service are corrected to state that the Answer responded to a Petition for Approval of a Distribution System Improvement Charge.

To clarify, no correction is required to the previously filed Answer and Verification; therefore, the OCA is only filing a corrected version of the cover letter and Certificate of Service. Please contact me with any questions.

Respectfully submitted,

A handwritten signature in blue ink that reads "Erin L. Gannon".

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Enclosures:

cc: Office of Administrative Law Judge
Law Bureau
Daniel Searfoorce, Bureau of Technical Utility Services (email only)
Office of Special Assistants (email only)
Certificate of Service

279083


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Re: Petition of UGI Utilities, Inc. – Electric
Division for Approval of a Distribution
System Improvement Charge
Docket No. P-2017-2619834

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to Petition for Approval of a Distribution System Improvement Charge, with accompanying Verification, in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Erin L. Gannon".

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Enclosures:

cc: Office of Administrative Law Judge
Law Bureau
Daniel Searfoorce, Bureau of Technical Utility Services (email only)
Office of Special Assistants (email only)
Certificate of Service

*279074

CERTIFICATE OF SERVICE

Re: Petition of UGI Utilities, Inc. – Electric :
Division for Approval of a Distribution : Docket No. P-2017-2619834
System Improvement Charge :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Answer to Petition for Approval of a Distribution System Improvement Charge, with accompanying Verification, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 23rd day of September 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Richard A. Kanaskie, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

David B. MacGregor, Esquire
Jessica R. Rogers, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

John R. Evans, Esquire
Office of Small Business Advocate
300 North Second Street
Commerce Building, Suite 202
Harrisburg, PA 17101-1303

Michael S. Swerling, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406



Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for:
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555 Walnut Street
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Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: September 24, 2019
*279075

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Utilities, Inc. – Electric	:	
Division for Approval of a Distribution	:	Docket No. P-2017-2619834
System Improvement Charge.	:	

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE
PETITION OF UGI UTILITIES, INC. – ELECTRIC DIVISION

I. INTRODUCTION

Pursuant to Section 5.61 of the Pennsylvania Code, 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of UGI Utilities, Inc. – Electric Division (UGI Electric or Company) for Approval of a Distribution System Improvement Charge (DSIC) for its electric operations. Through its Petition, UGI Electric seeks permission to implement a surcharge of up to 5% on all customers under Section 1353 of the Public Utility Code, 66 Pa. C.S. § 1353. This surcharge would recover return and depreciation on certain plant placed in service between base rate filings. As set forth more fully below, the Company’s proposed DSIC calculation and Tariff Supplement attached to the Petition may be contrary to Pennsylvania statute, case law and established Public Utility Commission policy. The Commission should deny UGI Electric’s Petition and proposed Tariff Supplement as filed. The OCA requests that the Commission refer the matter to the Office of Administrative Law Judge for development of an evidentiary record.

II. THE OCA'S ANSWER

This is a request by a utility to implement a DSIC under Act 11, 66 Pa. C.S. §§1350, et seq., and the Commission's Final Implementation Order.¹ While the OCA continues to review UGI Electric's filing, the OCA has identified several preliminary concerns with the proposed surcharge.

1. Eligible Property

UGI Electric proposes to recover the costs of tools, equipment and vehicles through the DSIC. UGI St. 1 at 4. In addition, Company witness Anzaldo states that future costs related to software or electronic systems would be appropriately included in the DSIC.² Id. at 5. The costs that UGI Electric proposes to recover through the DSIC under the category "other related capitalized costs" should be reviewed to determine whether they are properly recovered through base rates as part of the Company's normal capital planning process, rather than through a surcharge intended to accelerate the replacement of aging infrastructure.

The OCA also wishes to clarify a statement by Company witness Sorber on page 10 of UGI Statement 2. He stated:

The Company does not currently anticipate that it may need electronic systems and software in the immediate future. However, such updates may be required in order to ensure the safety of its distribution system and facilitate the repair and replacement of its distribution infrastructure. Therefore, consistent with the settlement reached in the DSIC proceedings for the UGI Gas rate districts, UGI Electric believes that electronic systems and software may be included in the DSIC at some point in the future.

¹ Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Order (Aug. 2, 2012) (Final Implementation Order).

² Mr. Anzaldo states:

Additionally, while the Company has no current plans to install any DSIC-eligible software or electronic systems which directly support DSIC-eligible repair and betterment projects, it could do so in the future and such costs would be appropriately included in the DSIC.

UGI St. 1 at 5.

UGI St. 2 at 10 (footnote omitted) (citing Docket No. P-2013-2397056 (UGI-PNG DSIC), Docket No. P-2013-2398835 (UGI-CPG DSIC), and Docket No. P-2013-2398833 (UGI Gas DSIC)). The Settlements reached between the active parties to the UGI-PNG and UGI-CPG proceedings specifically excluded certain software costs from DSIC recovery and preserved the parties rights to propose and challenge claims to recover software in future DSIC filings.³

2. Computation of DSIC

Act 40, codified at 66 Pa. C.S. § 1301.1, took effect on August 12, 2016 and states that it shall apply to all cases where the final order is entered after its effective date. 66 Pa. C.S. § 1301.1(c). The statute provides:

If an expense or investment is allowed to be included in a public utility's rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates.

66 Pa. C.S. § 1301.1(a) (emphasis added). The OCA's position is that Section 1301.1(a) requires that federal and state income tax deductions generated by DSIC investment be reflected in UGI-Electric's DSIC tariff and calculations. UGI Electric's proposed Tariff Supplement and DSIC calculations do not include federal and state income tax deductions and credits in the computation of income tax expense to reduce the DSIC rate. App. A (Tariff Supplement) at 51; UGI St. 1 at 7-8; UGI Exh. SFA-2.

The OCA notes that it raised the same issue in the UGI Gas DSIC proceeding referenced above. There, the matter was resolved by Settlement wherein the parties agreed that UGI Gas

³ Petition of UGI Penn Natural Gas, Inc. for Approval of a DSIC, Docket No. P-2013-2397056, R.D. at 9 (June 8, 2015); Petition of UGI Central Penn Gas, Inc. for Approval of a DSIC, Docket No. P-2013-2398835, R.D. at 8 (June 8, 2015). The issue was not addressed in the Settlement of the UGI Gas proceeding because the Commission's November 9, 2016 Order in that proceeding directed that issues regarding "other related capitalized costs" would be resolved consistently with the UGI-CPG and UGI-PNG Settlements. Petition of UGI Utilities, Inc. - Gas Division for Approval of a DSIC, Order at 6-8 (Nov. 9, 2017).

would follow Commission directives regarding application of Section 1301.1(a) to DSIC rates, following resolution of the same legal issue in other pending proceedings.⁴

⁴ The UGI Gas Settlement provided:

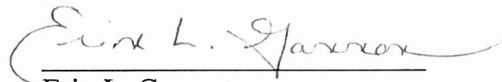
Issues regarding the impact of 66 Pa. C.S. § 1301.1 on the treatment of federal and state income tax deductions in calculating the DSIC charge are currently being litigated before the Commission. See Petition of Metropolitan Edison Co., et. al., for Approval of a DSIC, Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948. The parties agree that in subsequent DSIC filings, UGI-GD will follow Commission directives regarding whether to exclude or include Accumulated Deferred Income Taxes (“ADIT”) and whether or not to adjust the state income tax rate to flow through state income tax deductions and credits in the DSIC calculation.

Petition of UGI Utilities, Inc. - Gas Division for Approval of a DSIC, R.D. at 7 (June 8, 2017). The referenced Metropolitan-Edison proceeding has since been appealed to the Commonwealth Court and remanded to the Commission for the purpose of requiring the affected utilities to revise their tariffs and DSIC calculations in accordance with Section 1301.1(a). McCloskey v. Pa. P.U.C., Docket No. 697 C.D. 2018, Order (July 11, 2019); see also McCloskey v. Pa. P.U.C., Docket No. 1183 C.D. 2018, Order (July 11, 2019).

III. CONCLUSION

The surcharge proposed by UGI Electric may be contrary to Pennsylvania case law and well-established principles of sound ratemaking and regulatory policy. The OCA respectfully requests that the Commission deny the Company's Petition as filed, suspend the proposed Tariff Supplement and refer the matter to the Office of Administrative Law Judge for development of an evidentiary record.

Respectfully submitted,

A handwritten signature in cursive script, reading "Erin L. Gannon", written over a horizontal line.

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. No. 83487
EGannon@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

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(717) 783-5048

Dated: September 23, 2019
278902

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

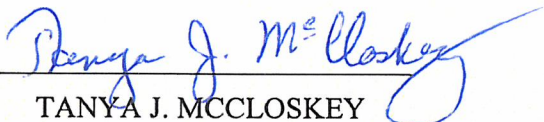
Petition of UGI Utilities, Inc. – Electric	:	
Division for Approval of a Distribution	:	Docket No. P-2017-2619834
System Improvement Charge	:	

VERIFICATION

I, TANYA J. MCCLOSKEY, hereby state that the facts set forth in the Answer of the Office of Consumer Advocate are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 (relating to unsworn falsification to authorities).

September 23, 2019

Date

Signed: 
TANYA J. MCCLOSKEY

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

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