



March 23, 2020

VIA E-File

The Honorable Christopher P. Pell
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
cpell@pa.gov

Re: Pa. PUC v. UGI Utilities, Inc. – Gas Division, Docket No. R-2019-3015162
**Answer of CAUSE-PA in Support of the Motion of I&E to Amend and Suspend the
Procedural Schedule**

Dear Judge Pell,

Please find the attached **Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in Support of the Bureau of Investigation and Enforcement's (I&E) Motion to Amend and Suspend the Procedural Schedule.

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully Submitted,

John Sweet, Esq.
Counsel for CAUSE-PA

CC: Rosemary Chiavetta, Secretary (Via E-file)
Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2019-3015162
	:	
UGI Utilities, Inc. – Gas Division	:	
	:	

ANSWER OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA IN SUPPORT OF THE MARCH 16, 2020 MOTION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.61-5.63, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, hereby files this Answer to the Motion of the Bureau of Investigation and Enforcement (I&E) to Suspend the Procedural Schedule During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission and to Order the Parties to Amend and Establish a New Procedural Schedule Upon the Resumption of Normal Operations of the Commission (Motion). As explained below, CAUSE-PA supports the relief requested by I&E, and seeks further relief as described below pursuant to 52 Pa. Code § 5.62. In support thereof, and in response to I&E’s Motion, CAUSE-PA asserts the following:

1. CAUSE-PA agrees with and incorporates by reference herein paragraphs 1-5 of the Motion describing the emergency actions taken up to March 16, 2020 (when the Motion was filed)

by Pennsylvania Governor Tom Wolf to protect the public from further spread of the novel coronavirus, COVID-19.

2. CAUSE-PA adds to this prior background the fact that, on Friday, March 13, 2020, the Commission issued an Emergency Order, which took decisive and dramatic steps to prohibit public utilities from terminating service to residential consumers, except in emergency circumstances.¹ In doing so, the Commission squarely recognized the profound economic impact that the emergency actions taken in response to COVID-19 would have on residential consumers and the need for emergency action to ensure that households would remain connected to critical service throughout the emergency, even if they cannot afford to pay for service. In issuing its Order, the Commission concluded: “Irreparable injury to the public is likely to occur with disruption of service, creating a clear and present danger to life.”²
3. On Thursday, March 19, 2020, three days after the instant Motion was filed, Governor Tom Wolf ordered the closure of all non-life-sustaining businesses in Pennsylvania.³
4. On Friday, March 20, 2020, the Commission issued a further Emergency Order which concluded that, pursuant to the Governor’s Proclamation of Disaster Emergency, “[a]ll statutory and regulatory deadlines may be suspended, extended, waived or changed during the pendency of the Proclamation of Disaster Emergency.”⁴ The Commission further

¹ Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19, Emergency Order, Docket No. M-2020-3019244 (March 13, 2020).

² Id. at 2.

³ Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses that are Not Life Sustaining (March 19, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

⁴ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262 (March 20, 2020).

ordered that, “[f]ollowing the termination of the Proclamation of Disaster Emergency, all deadlines suspended may be extended by an additional thirty (30) days”⁵

5. In its March 20 Emergency Order, the Commission delegated authority to each of its Bureaus to “*suspend extend, waive or change a statutory or regulatory deadline which may hinder, rather than further, the mission of the Commission*, after consultation with all interested parties, as deemed necessary and appropriate.”⁶
6. In its Motion, I&E rightly concludes that “suspension of the procedural schedule is reasonable and necessary.” (Motion at para. 19). Indeed, failure to suspend the procedural schedule in this proceeding would hinder the Commission in its mission – as well as its statutory duties to ensure that rates are just and reasonable – and that service remains accessible to consumers based on reasonable terms and conditions. CAUSE-PA shares and agrees with each of the reasons listed by I&E in support of suspending the procedural schedule, specifically including the following:
 - a. Like I&E, all offices of counsel for CAUSE-PA, the Pennsylvania Utility Law Project, are closed. Counsel may not return to their offices until Governor Wolf’s March 19 Emergency Order closing all non-life-sustaining businesses is lifted. Notwithstanding the willingness and ability of counsel for CAUSE-PA to work remotely from home, CAUSE-PA shares the concerns of I&E that it will be “extremely difficult, if not impossible” to fully and appropriately investigate UGI’s filing and create a record for the Commission to review. Indeed, whether to proceed on the current time-frame is a question of due process, as these challenges will present insurmountable logistical issues that will necessarily impact the ability of

⁵ Id. at 4.

⁶ Id. (emphasis added).

CAUSE-PA and its counsel to protect the rights of its members and the vulnerable low and moderate income consumers that CAUSE-PA seeks to protect through intervention in this proceeding.

- b. CAUSE-PA also shares I&E's concern regarding the challenges inherent in the review of CONFIDENTIAL and HIGHLY CONFIDENTIAL documents. This concern is even more pressing in light of the Governor's March 19 Emergency Order ordering the closure of all non-life-sustaining businesses, including legal services.⁷ Indeed, counsel would need to defy the Orders of the Governor – at great risk to their person – in order to protect the interests of its clients. Such a choice should not be required of counsel for any party in a non-emergency proceeding such as this.
- c. CAUSE-PA is likewise very concerned that the current market turmoil discussed by I&E will make it “almost impossible to fairly evaluate the assumptions made in the Company's Rate of Return testimony.” (Motion at para. 12). This conclusion is further reinforced by the dramatic actions taken by the State and Federal government since I&E first filed its Motion. In less than a week's time, the Governor has ordered nearly all commercial business in Pennsylvania to close; “stay at home” and “shelter-in-place” orders have been issued across the Nation

⁷ Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses that are Not Life Sustaining (March 19, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

and in the Commonwealth⁸; and the National Guard is being deployed in nearby New York, as well as California and Washington state.⁹

- d. Like I&E, the inability of CAUSE-PA’s members, counsel, and witness to investigate the Company’s base rate filing “will severely hamper” the ability for CAUSE-PA to create a full and complete record. (Motion at para. 15). Such a result will directly undermine the ability for the PUC to fully investigate UGI’s rate proposal and, in turn, to fulfill its public service mission.¹⁰
7. CAUSE-PA is also deeply concerned about the profound economic impact that the COVID-19 outbreak will have on low and moderate income households across the Commonwealth, many of whom will lose substantial income as nearly all commerce in Pennsylvania grinds to a jarring halt. Low wage hourly workers with high-contact, public-facing jobs (like cashiers, wait staff, hotel staff, personal care aides, cooks, and teaching assistants) will be particularly hard hit, as these jobs typically lack any paid leave, often rely heavily on tips, and cannot be completed remotely.¹¹
8. A critical component to determining whether a proposed rate is just and reasonable is an examination of whether the rates charged are also affordable for those who reside in the utility’s service territory. Given that the magnitude of economic disaster caused by

⁸ City of Philadelphia, Office of the Mayor, Department of Health, Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses and Congregation of Persons to Prevent the Spread of 2019 Novel Coronavirus (COVID-19), Order No. 2 (March 22, 2020), <https://www.phila.gov/media/20200322130746/Order-2-Business-And-Congregation-Prohibition-Stay-At-Home.pdf>.

⁹ Christina Zhao, [Trump Announces Activation of the National Guard in Worst-Hit COVID-19 States](https://www.newsweek.com/trump-announces-deployment-national-guard-worst-hit-covid-19-states-were-fighting-invisible-1493666), Newsweek, <https://www.newsweek.com/trump-announces-deployment-national-guard-worst-hit-covid-19-states-were-fighting-invisible-1493666>.

¹⁰ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, [Emergency Order](#), Docket No. M-2020-3019262, at 2 (March 20, 2020).

¹¹ See, e.g., [Who is Most at Risk of the Coronavirus Crisis: 24 Million of the Lowest-Income Workers](https://www.politico.com/interactives/2020/coronavirus-impact-on-low-income-jobs-by-occupation-chart/), Politico (March 21, 2020), <https://www.politico.com/interactives/2020/coronavirus-impact-on-low-income-jobs-by-occupation-chart/>.

COVID-19 is not yet known and cannot yet be calculated with certainty, it is likewise impossible to determine whether the proposed rates that UGI seeks are just and reasonable.

9. Similarly, the Commission cannot reasonably determine at this point whether UGI's universal service programming is appropriately funded and available to consumers in light of the rate increase, pursuant to 66 Pa. C.S. § 2203(8), as it is impossible to determine how many of UGI's residential customers will now be in need of rate assistance as a result of the economic devastation caused by COVID-19. The anticipated level of need and program enrollment will directly impact the amount charged to other consumers through rates to support universal service programming. Thus, it is essential and critical to suspend further proceedings in this case at least until such time as the Proclamation of Disaster Emergency in Pennsylvania is lifted. Indeed, it is both necessary and prudent to suspend further proceedings until a more accurate assessment of the need for universal service program assistance can be made.
10. The primary justification UGI advances for its rate case is to finance UGI's plans to "make substantial distribution system investments." (UGI St. 1 at 8-9). In light of the current, ongoing, and utterly unprecedented emergency, and the likely profound impact of the emergency on the economy, CAUSE-PA asserts that it is unreasonable at this time to accurately determine the priority, cost, and ability of consumers to shoulder the cost of UGI's proposed infrastructure investments and system enhancements.
11. CAUSE-PA notes that, at the time UGI filed its rate case, the economy was in a state of growth. But today we stand in a very different position – one that is rife with devastating short-term losses and a tumultuous and uncertain future. CAUSE-PA asserts that it is therefore squarely in the public interest to suspend the current investigation into UGI's rate

case filing during the pendency of the Proclamation of Disaster Emergency in Pennsylvania. Consistent with I&E's prayer for relief, CAUSE-PA asserts that it is necessary and proper to also suspend the statutory timeframe for investigation of a rate filing pursuant to 66 Pa. C.S. § 1308(d). CAUSE-PA further supports I&E's request that ALJ Pell order a second Prehearing Conference – at which time the parties and ALJ Pell will establish a new procedural schedule based on the time lost during the emergency. (Motion at 6).

12. Notwithstanding its support for I&E's Motion, and I&E's request to suspend the current procedural schedule, CAUSE-PA nevertheless files this Answer seeking additional relief in light of the additional facts that have emerged since I&E first filed its Motion on March 16, 2020. Specifically, CAUSE-PA respectfully requests that ALJ Pell issue an Order requiring UGI to update its filing and its associated rate request based on then-current market conditions, prior to commencing with a new procedural schedule. Indeed, the economy has undeniably changed since UGI first filed its rate case on January 28, 2020. As such, and consistent with the arguments raised above, UGI must be required to update its filing based on conditions present after the pendency of the Proclamation of Disaster Emergency. Otherwise, if UGI were not required to make an updated filing, the dual burdens of production and persuasion would be unfairly shifted to the other parties in the proceeding.

13. This additional request for relief, which would extend the resumption of this proceeding for a brief period of time after the Proclamation of Disaster Emergency is lifted, is consistent with the Commission's March 20, 2020 Emergency Order, which held that

“[f]ollowing the termination of the Proclamation of Disaster Emergency, all deadlines suspended may be extended by an additional thirty (30) days.”¹²

WHEREFORE, CAUSE-PA respectfully requests – for the reasons more fully explained above – that the Honorable Christopher Pell, Administrative Law Judge, issue an Order granting I&E’s Motion to suspend the procedural schedule and to Order the parties to establish a new procedural schedule at a second prehearing conference. Further, CAUSE-PA respectfully requests that Judge Pell require UGI to make an amended filing to its rate case after the pendency of the Proclamation of Disaster Emergency.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT

Counsel for CAUSE-PA



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March 23, 2020

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¹² Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262, at 4, para 3 (March 20, 2020)

Verification

I, Elizabeth R. Marx, on behalf of and as counsel for the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), hereby state that the facts contained in the foregoing Answer of CAUSE-PA are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, 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 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in blue ink that reads "Elizabeth R. Marx". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Elizabeth R. Marx, Esq.
Counsel for CAUSE-PA

Date: March 23, 2020

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, et al. :
 :
 v. : Docket No. R-2019-3015162
 :
 UGI Gas of Pennsylvania, Inc. :

Certificate of Service

I hereby certify that I have this day served copies of the **Answer of CAUSE-PA in Support of the Motion of I&E to Amend and Suspend the Procedural Schedule** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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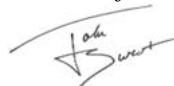
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