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June 2, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: Petition of UGI Utilities, Inc. - Electric Division for Approval of its Energy Efficiency and Conservation Plan; Docket No. M-2010-2210316

Dear Secretary Chiavetta:

Please find enclosed the original and nine (9) copies of the *Amicus Curiae* Brief of Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA") and West Penn Power Industrial Intervenors ("WPPII"), in opposition of UGI Utilities, Inc. - Electric's proposal to recover lost revenues resulting from implementation of voluntary energy efficiency and conservation plan, in the above-referenced proceeding.

As reflected on the attached Certificate of Service, all parties to this proceeding are being duly served with copies of this filing. Please date stamp the extra copy of this transmittal letter and *Amicus Curiae* Brief, and kindly return it to us for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
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Industrial Customer Alliance, and West Penn Power Industrial
Intervenors

CJZ/sds

Enclosures

c: Administrative Law Judge Susan D. Colwell (via E-mail and Hand Delivery)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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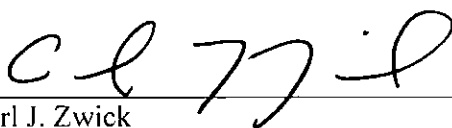
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Dated this 2nd day of June, 2011, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Utilities, Inc. - Electric :
Division for Approval of its Energy : Docket No. M-2010-2210316
Efficiency and Conservation Plan :

***AMICUS CURIAE* BRIEF OF THE
INDUSTRIAL CUSTOMER GROUPS
IN OPPOSITION OF UGI UTILITIES, INC. – ELECTRIC'S
PROPOSAL TO RECOVER LOST REVENUES RESULTING FROM
IMPLEMENTATION OF VOLUNTARY ENERGY EFFICIENCY AND
CONSERVATION PLAN**

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Dated: June 2, 2011

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I. INTRODUCTION

On November 9, 2010, UGI Utilities, Inc. – Electric ("UGI Electric" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Company's voluntary Energy Efficiency and Conservation Plan ("EE&C Plan" or "Plan"), pursuant to the Commission's December 23, 2009, Secretarial Letter at Docket No. M-2009-2142851. UGI Electric requests, among other things, that the Commission approve the Company's EE&C Plan and allow UGI Electric to recover projected lost revenues resulting from the implementation of the voluntary Plan via a Conservation Development Rider ("CD Rider"), which is a Section 1307 automatic adjustment mechanism, or, alternatively, through a specifically designed regulatory asset in future base rate proceedings.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII"), (collectively, "Industrial Customer Groups") submit this *Amicus Curiae* Brief to express their support for the positions taken by the Office of Consumer Advocate ("OCA"), Office of Trial Staff ("OTS"), and Office of Small Business Advocate ("OSBA") (collectively, "State Advocates"), in opposition of UGI Electric's proposal to collect lost revenues associated with the Company's voluntary EE&C Plan.

IECPA is a 24 member *ad hoc* group of energy intensive industrial customers of electricity and natural gas. More than 41,000 Pennsylvanians are employed by IECPA member companies, which use significant amounts of electricity and natural gas in their operations. DII, MEIUG, PICA, PAIEUG, PPLICA, and WPPII are all *ad hoc* groups of commercial,

institutional, and industrial customers of electricity that participate in various proceedings before this Commission.

The Industrial Customer Groups are authorized as of right to submit this *Amicus Curiae* Brief pursuant to 52 Pa. Code § 5.502(e). That provision provides, in pertinent part, "[a] person interested in the issues involved in a Commission proceeding, although not a party, may, without applying for leave to do so, file amicus curiae briefs in regard to those issues."¹ Because other Electric Distribution Companies ("EDCs") may follow UGI Electric's example by filing "voluntary" EE&C Plans outside of the Act 129 of 2008 ("Act 129") process,² the Industrial Customer Groups may face similar requests in the future to institute revenue decoupling mechanisms. As set forth below, the Industrial Customer Groups believe that revenue decoupling is not permissible under the Public Utility Code ("Code"), regardless of whether the particular conservation plan is filed pursuant to Act 129 or Section 1319 of the Code.³ As a result, the Industrial Customer Groups have an interest in this issue that supports the acceptance of this *Amicus Curiae* Brief.

II. HISTORY OF PROCEEDING

As noted above, on November 9, 2010, UGI Electric filed with the PUC its voluntary EE&C Plan along with supporting testimony. The Company's filing requests, among other things, that the Commission approve the Plan on or before September 30, 2011. On November 29, 2010, answers to the Plan were filed by OCA, OTS and OSBA. On December 1, 2010, the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF") filed a petition to intervene in this proceeding.

¹ 52 Pa. Code § 5.502(e).

² See 66 Pa. C.S. § 2806.1, *et seq.*

³ See 66 Pa. C.S. § 1319.

At the January 5, 2011, prehearing conference, SEF's intervention was granted, and the following procedural schedule was adopted:

Other parties' direct testimony	March 17, 2011
All parties' rebuttal	April 7, 2011
All parties' surrebuttal	April 21, 2011
Company rejoinder	April 29, 2011
Evidentiary hearing	May 4-5, 2011
Initial brief	June 2, 2011
Response brief	June 13, 2011
Recommended decision	July 19, 2011

The State Advocates circulated direct and surrebuttal testimony, which argued, among other things, that UGI Electric's proposal to recover lost revenues resulting from the Company's implementation of its voluntary EE&C Plan, in any form, should be rejected by the Commission. Throughout this proceeding, UGI Electric resisted the State Advocates' recommendation that the PUC deny the Company's ability to recover lost profits.

III. SUMMARY OF ARGUMENT

The Industrial Customer Groups join the State Advocates in respectfully urging the Commission to reject UGI Electric's request to recover lost revenues that may result from the Company's implementation of its voluntary EE&C Plan. UGI Electric's proposal to collect these projected lost revenues – whether through the CD Rider or as a specifically designed regulatory asset in a future base rate case – should be denied, not only because the recovery of such lost revenues is prohibited by the Code, but also because it contravenes sound public policy.

Accordingly, the Industrial Customer Groups hereby submit this *Amicus Curiae* Brief to oppose UGI Electric's recovery of lost revenues associated with the implementation of its voluntary EE&C Plan. The Industrial Customer Groups generally support the arguments made by the OCA, OTS, and OSBA on this issue and request that the PUC reject UGI Electric's lost revenue recovery proposal.

IV. ARGUMENT

* * *

C. **Proposed Modifications to Filed Plan**

1. *Elimination of Any Revenue Recovery Mechanism*

The Commission should deny UGI Electric's request to recover the projected lost revenues that may be associated with the implementation of the Company's voluntary EE&C Plan, as the collection of such lost revenues is prohibited by Pennsylvania law and is bad public policy that cuts against the Commonwealth's energy efficiency and conservation goals. In this proceeding, "UGI Electric projects that it will lose revenues associated with reduced energy consumption as a result of implementation of its Plan and proposes to recover the lost revenue associated with the Plan."⁴ UGI Electric primarily asks that the Commission approve the Company's automatic recovery of its projected lost revenues through the CD Rider, a Section 1307 automatic adjustment mechanism.⁵ The Company suggests that its recovery of such lost revenues through the CD Rider is necessary because "UGI Electric should be able to maintain revenue stability during the period leading up to its next base rate case while its customers benefit from energy savings."⁶ According to UGI Electric, "[f]oreseeable revenue deficiencies without an adjustable rate mechanism present a significant hurdle for a voluntary filer to move forward with conservation efforts."⁷ In other words, the Company proposes that, as a means of promoting energy efficiency in its service territory, the Commission should allow UGI Electric to institute a revenue decoupling mechanism to recover its projected lost revenues that may result due to implementation of the Company's voluntary EE&C Plan.

⁴ UGI Electric Plan, p. 77.

⁵ *Id.* at 78.

⁶ UGI Electric Statement No. 3, Direct Testimony of William J. McAllister (hereinafter, "UGI Electric St. 3"), p. 3.

⁷ *Id.*

As an alternate proposal, UGI Electric requests that the PUC approve regulatory asset treatment for its lost revenues, which would allow the Company to track and recover its accrued lost revenues with an additional interest rate component in a future base rate proceeding.⁸ UGI Electric's alternate proposal also requests that the Commission allow the Company to establish the methodology for estimating its lost revenues plus interest in this proceeding without further review in a future base rate case.⁹ Thus, this alternate proposal is essentially equivalent to the Company's primary proposal to institute the CD Rider, in that it amounts to a request to remove the lost revenue component of UGI Electric's rate base from future consideration in a base rate proceeding.¹⁰

Revenue decoupling mechanisms, such as the Company's proposed CD Rider and proposed regulatory asset treatment for its lost revenues, are prohibited by Section 1301 of the Code.¹¹ Specifically, Section 1301 states, in pertinent part:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be *just and reasonable*, and in conformity with regulations or orders of the commission.

As required by Section 1301, the Commission has a fundamental duty to ensure that the rates charged to customers are just and reasonable.¹² The primary vehicle for ensuring that rates are just and reasonable is a rate proceeding filed pursuant to Section 1308 of the Code.¹³ For most categories of costs, especially those that relate to electricity distribution, a rate proceeding pursuant to Section 1308 is the only vehicle to review a utility's costs and adjust the rates paid by

⁸ UGI Electric Statement No. 3R, Rebuttal Testimony of William J. McAllister (hereinafter, "UGI Electric St. 3R"), pp. 7-9; OCA Statement No. 1S, Surrebuttal Testimony of Geoffrey C. Crandall (hereinafter, "OCA St. 1S"), p. 15.

⁹ UGI Electric St. 3R, p. 9; OCA St. 1S, p. 15.

¹⁰ See OCA St. 1S, p. 16; OTS Statement No. 1, Direct Testimony of Scott Granger (hereinafter, "OTS St. 1"), pp. 9-10.

¹¹ 66 Pa. C.S. § 1301.

¹² *Id.*

¹³ See *id.* at § 1308.

customers. This review is accomplished using a historic and future test year approach that examines multiple variables, including expenses, utility plant, expected customer sales and an appropriate return on rate base (reflecting the reasonable cost of debt, an appropriate capital structure and a reasonable return of equity). Rates are calculated and designed to provide a utility, such as UGI Electric, with an opportunity to earn a fair return, but not to guarantee earnings each year.¹⁴ Revenue decoupling guarantees that earnings are not impacted by changes in sales volumes. This is not consistent with the historic interpretation of the Public Utility Code.

In addition, apart from specific costs recoverable through automatic adjustment charges,¹⁵ Pennsylvania has followed the generally accepted ratemaking prohibition against single issue ratemaking.¹⁶ Single issue ratemaking occurs when only one element of the general ratemaking equation is examined between rate cases and the customers' rates are adjusted to reflect only changes in that element. Single issue ratemaking is fundamentally unfair and inequitable because it does not permit the Commission to examine other savings or expense adjustments that may favor consumers. Under single issue ratemaking, the Commission reviews only a limited portion of the overall ratemaking equation and, in effect, assumes that a single variable such as a reduction in sales translates into reduced profits for the utility. If all other elements of the equation remain consistent from the future test year, revenue decoupling essentially *guarantees* the utility an awarded return, rather than just ensuring the *opportunity* to earn an awarded return. UGI Electric's sales may decrease due to conservation efforts; however, if the Company's cost of

¹⁴ See *In re Pa. Power & Light Co.*, 1998 WL 417435, 3 (Pa. P.U.C. 1998) (citing *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) ("[U]nder the just and reasonable standard pursuant to traditional regulation, a utility was never entitled to a guaranteed recovery of revenues. Under traditional regulation, rates were set to provide a reasonable opportunity for the utility to earn an anticipated revenue requirement, including an authorized rate of return on its investment.")).

¹⁵ For example, natural gas supply costs are legislatively permitted to be recovered through an automatic adjustment mechanism.

¹⁶ See, e.g., *Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336, 1350 (Pa. Commw. 1995).

borrowing also is reduced, or if its distribution costs decrease commensurate with the reduced sales, then the utility's profit or return is unaffected.¹⁷ Implementing single issue ratemaking schemes such as the Company's CD Rider proposal, or the Company's alternate proposal to bestow regulatory asset treatment upon its lost revenues without further review in a future case rate proceeding, deprives the Commission of the ability to examine those types of offsets.

The Company's lost revenue recovery mechanisms – including both the Company's primary and alternative proposals – are also contrary to the legislative intent of Act 129,¹⁸ as well as the Commission's recent guidance and public policy considerations. Act 129 expressly prohibits revenue decoupling for energy efficiency and conservation plans of larger EDCs.¹⁹ Specifically, Section 2806.1(k)(2) and (3) provide:

(2) Except as set forth in paragraph (3), decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.

(3) Decreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under section 1308 (relating to voluntary changes in rates).²⁰

While Act 129 arguably may not directly apply to smaller EDCs, such as UGI Electric, the General Assembly's general disfavor for revenue decoupling is apparent through Act 129.

Moreover, the Commission's Secretarial Letter at Docket No. M-2009-2142851, provides useful guidance that requires UGI Electric's EE&C Plan to be "cost-effective." Contrary to this guidance, revenue decoupling mechanisms are expensive for both consumers and regulators, as

¹⁷ See OCA St. 1S, p. 16.

¹⁸ See 66 Pa. C.S. § 2806.1, *et seq.*; see also OTS St. 1, p. 13.

¹⁹ As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs.

²⁰ 66 Pa. C.S. § 2806.1(k)(2),(3).

constant "true ups" (*i.e.*, rate adjustments) are necessary. For instance, such mechanisms must be sufficiently detailed to differentiate the changes in a utility's distribution revenues that occur due to voluntary energy efficiency and conservation measures, from those that occur due to other factors, such as weather, economic downturns, and plant closures. These necessary true-ups will engage time, money, and personnel resources from regulatory bodies and consumer parties, such as the State Advocates who would seek to participate in the true-ups in order to ensure that the resulting rates are just and reasonable. UGI Electric's proposed revenue decoupling mechanisms are therefore not only contrary to Pennsylvania law, but also constitute bad public policy that curtails the energy efficiency and conservations goals encouraged by the Commonwealth and this Commission.²¹

Finally, Section 1319 of the Code specifically addresses the costs that can be recovered by an EDC that institutes a "voluntary" EE&C Plan.²² Specifically, Section 1319 states:

if a[n] . . . electric public utility elects to establish a conservation or load management program and that program is approved by the commission after a determination by the commission that the program is prudent and cost-effective . . . the commission shall allow the public utility to recover all prudent and reasonable costs associated with the development, management, financing and operation of the program, provided that such prudent and reasonable costs shall be recovered only in accordance with appropriate accounting principles.²³

²¹ For these same reasons, other states, under the same environmental, economic, and regulatory pressures as Pennsylvania, have concluded that there are more effective ways to promote efficiency and conservation other than revenue decoupling. *See, e.g., Report of Revenue Decoupling for Transmission & Distribution Utilities*, Presented to the Maine Utilities and Energy Committee, Jan. 31, 2008 (statement by the Maine Public Utilities Commission, Office of Public Advocate, and Office of Energy Independence & Security); *Aligning Utility Incentives with Investment in Energy Efficiency*, U.S. Environmental Protection Agency, Nov. 2007, at Table 5-3; *Decoupling and Other Mechanisms to Address Utility Disincentives for Implementing Energy Efficiency*, State EE/RE Technical Forum May, 19, 2005, available at www.epa.gov; *Florida Report to Legislature On Revenue Decoupling*, Florida Public Service Commission, Submitted 2008.

²² *See* 66 Pa. C.S. § 1319.

²³ *Id.*

Lost distribution revenues are not "costs" associated with development, managerial, financing or operation of the Company's EE&C program and, thus, are not recoverable under Section 1319.²⁴

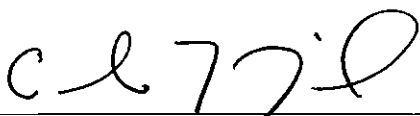
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IV. CONCLUSION

WHEREFORE, the Industrial Customer Groups respectfully request that the Pennsylvania Public Utility Commission reject UGI Utilities, Inc. – Electric's proposal to recover from ratepayers the lost revenues that may result from the implementation of UGI Utilities, Inc. – Electric's voluntary Energy Efficiency and Conservation Plan.

Respectfully submitted,

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Dated: June 2, 2011

²⁴ See, generally *Pa. Industr. Energy Coal. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336 (Pa. Cmwlth. 1995).