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File #: 170952

October 31, 2017

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Petition of UGI Utilities, Inc. - Gas Division to Establish a Schedule for the Installation of Daily Metering Facilities on All Rate IS (Interruptible Service) and Rate DS (Delivery Service) Accounts; to Thereafter Transfer All Rate IS and DS Customer Accounts from Intra-Month to Calendar Month Billing and Balancing Pools; and to Recover Associated Costs Pursuant to 66 Pa.C.S. § 2205(c)(7) Docket No. P-2017-2607269**

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Dear Secretary Chiavetta:

Enclosed for filing is the Answer of UGI Utilities, Inc. to RESA, Et Al.'s Petition to Intervene Out of Time and Opposition to Petition for Leave to Withdraw, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl  
Enclosures

cc: Honorable Elizabeth Barnes  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL & FIRST CLASS MAIL

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Date: October 31, 2017



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Utilities, Inc. – Gas :  
Division to Establish a Schedule for the :  
Installation of Daily Metering Facilities on :  
All Rate IS (Interruptible Service) and Rate :  
DS (Delivery Service) Accounts; to : Docket No. P-2017-2607269  
Thereafter Transfer All Rate IS and DS :  
Customer Accounts from Intra-Month to :  
Calendar Month Billing and Balancing :  
Pools; and to Recover Associated Costs :  
Pursuant to 66 Pa. C.S. § 2205(c)(7) :

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**ANSWER OF UGI UTILITIES, INC. TO  
RESA, *Et Al.*'s PETITION TO INTERVENE OUT OF TIME AND OPPOSITION  
TO PETITION FOR LEAVE TO WITHDRAW**

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**TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:**

Pursuant to 52 Pa. Code §§ 5.61 and 5.66, UGI Utilities, Inc. – Gas Division (“UGI” or the “Company”), hereby respectfully submits its Answer to the Retail Energy Supply Association’s (“RESA”) and Shipley Choice, LLC d/b/a Shipley Energy (“Shipley”) (collectively, “NGS Parties”) Petition to Intervene Out of Time and Opposition to Petition for Leave to Withdraw (“Petition to Intervene”). As explained herein, UGI respectfully requests that Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) deny the NGS Parties’ untimely Petition to Intervene. NGS Parties’ counsel was served with the above-captioned Petition (“Daily Metering Petition”) five months ago. Since that time up through the prehearing conference, the NGS Parties’ counsel was served with every pleading, notice, and order. Further, the NGS Parties had a full opportunity to participate in the prehearing conference. It failed to do so. Moreover, on October 11, 2017, counsel for UGI contacted the NGS Parties’ counsel about the failure to intervene. The NGS Parties’ counsel stated that if they did not

intervene by close of business on October 13, 2017, they were not intervening in this matter. UGI discussed the proposal to withdraw the Daily Metering Petition with I&E, OCA, and OSBA in the event that the NGS Parties did not intervene on October 13, 2017, and none of these active parties objected. The NGS Parties did not intervene by that date. Now, despite their counsel's representation and the failure to intervene by October 13, 2017, the NGS Parties seek to intervene out of time and oppose UGI's Petition for Leave to Withdraw the Daily Metering Petition.

UGI avers that the NGS Parties' untimely Petition to Intervene should be denied. RESA and Shipley have been afforded more than enough opportunities to intervene in this proceeding. If RESA and Shipley want to revisit the merits of the daily metering proposal in a future proceeding, they may do so. Indeed, UGI's unopposed Petition for Leave to Withdraw was filed without prejudice to such issues being examined in a subsequent proceeding. Therefore, all parties, including the NGS Parties, can revisit the issues in the future and will not be prejudiced by UGI's Petition for Leave to Withdraw. However, the NGS Parties should not be allowed to intervene after failing to act for nearly five months. For these reasons, and as explained in more detail below, UGI respectfully requests that the NGS Parties' Petition to Intervene be denied.

In support thereof, UGI states as follows:

**I. BACKGROUND**

1. On May 31, 2017, UGI filed the Daily Metering Petition seeking: (1) to establish a schedule for the installation of daily metering facilities on all Rate IS (Interruptible Service) and Rate DS (Delivery Service) accounts; (2) to thereafter transfer all Rate IS and DS customer accounts from intra-month to calendar month billing and balancing pools; and (3) to recover the

associated costs through a proposed Section 1307 surcharge mechanism, termed the “Retail Markets Rider,” pursuant to 66 Pa. C.S. § 2205(c)(7).

2. The Daily Metering Petition arose from the Pennsylvania Public Utility Commission (“Commission”) approved settlement in UGI’s 2016 base rate case proceeding (“2016 Base Rate Case Settlement”).

3. During the 2016 Base Rate Case, RESA proposed that UGI be required to install daily metering facilities for all Rate IS and Rate DS accounts. RESA was the only party to the 2016 Base Rate Case that supported this proposal.<sup>1</sup>

4. Because there was not sufficient time and data to fully consider RESA’s proposal in the context of the rate case, and in an effort to reach a full settlement, the parties to the 2016 base rate case agreed to defer the issue and address it in a future proceeding. Specifically, the Commission-approved 2016 Base Rate Case Settlement provides as follows:

By no later than June 1, 2017, UGI Gas shall make a filing with the Commission that proposes a requirement for all transportation customers under Rates DS and IS to have installed operable AMR/Metretek equipment by a date certain. As part of that proposal, UGI Gas will include: (i) an estimate of the cost of such installed equipment; (ii) a proposed means of recovering the costs of such installations; and (iii) a provision to transfer all Rate DS and IS customers to calendar month billing and balancing pools when all such customers have installed operable AMR/Metretek equipment in a manner consistent with the transfer of Rate XD, LFD, and IL customers described in Paragraph 87(a) above. *All Parties reserve the right to participate in and challenge the filing contemplated by this subparagraph.* UGI Gas agrees to serve the Parties to this proceeding with a copy of the filing contemplated by this subparagraph at the time of its filing with the Commission.

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<sup>1</sup> Although Shipley was a party to the UGI 2016 Base Rate Case, it did not actively support RESA’s proposal. *See Natural Gas Supplier Parties’ Statement In Support Of Settlement*, Docket No. R-2015-2518438 (Filed on June 30, 2016).

*See Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2015-2518438, *et al*, pp. 22-23, 43 (Order entered Oct. 14, 2016) (emphasis added).

5. On June 2, 2017, the Company filed an amended Daily Metering Petition to primarily clarify the rate schedules to which the Retail Markets Rider would apply. On June 15, 2017, UGI filed its proposed *pro forma* tariff language along with a *pro forma* rate calculation for the Retail Markets Rider.

6. All parties in the 2016 Base Rate Case, including counsel for RESA and Shipley, were served with the Daily Metering Petition filed on May 31, 2017, the amended Daily Metering Petition filed on June 2, 2017, and the *pro forma* tariff language and rate calculation filed on June 15, 2017.

7. On June 22, 2017, the Office of Consumer Advocate (“OCA”) filed an Answer to the Daily Metering Petition, as amended.

8. On June 29, 2017, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, Public Statement, and Verification.

9. On August 24, 2017, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance.

10. No other parties timely intervened in this proceeding.

11. On August 28, 2017, the Commission issued a Prehearing Conference Notice scheduling a prehearing conference for September 28, 2017, before the ALJ. The Prehearing Conference Notice was served on all parties to the 2016 Base Rate Case, including counsel for the NGS Parties.

12. On August 30, 2017, a Prehearing Conference Order was issued by the ALJ setting forth certain rules and requirements for the prehearing conference and the proceeding

generally. The Prehearing Conference Order also directed the parties to submit prehearing memoranda on or before September 26, 2017. The Prehearing Conference Order was served on all parties to the 2016 Base Rate Case, including counsel for the NGS Parties.

13. On September 26, 2017, the active parties filed their prehearing memoranda.

14. A prehearing conference was held on September 28, 2017. UGI, I&E, OCA, and OSBA were the only parties to appear and participate at the prehearing conference. Neither RESA nor Shipley appeared at the prehearing conference.

15. On September 29, 2017, the ALJ issued a Procedural Order, which, among other things, established the procedural schedule, set forth rules for the proceeding, and established the formal service list. Because RESA and Shipley failed to intervene or take any action indicating that it planned to participate in this proceeding, they were not placed on the formal service list.

16. On October 3, 2017, a Hearing Notice was issued for the evidentiary hearing scheduled for February 21, 2018.

17. On October 11, 2017, counsel for UGI contacted counsel for the NGS Parties, who confirmed that RESA and Shipley were served with the Daily Metering Petition and advised that if the NGS Parties did not intervene by October 13, 2017, they did not intend to intervene or otherwise participate in the instant proceeding.

18. The NGS Parties did not intervene by October 13, 2017.

19. UGI discussed the proposal to withdraw the Daily Metering Petition with I&E, OCA, and OSBA in the event that the NGS Parties did not intervene on October 13, 2017, and none of these active parties objected.

20. Due to the lack of support by the active parties and the several issues raised by the active parties, and based on the representation by NGS Parties' counsel, UGI filed a Petition for Leave to Withdraw the Daily Metering Petition ("Petition to Withdraw") on October 16, 2017.

21. On October 19, 2017, the ALJ issued an Interim Order suspending the procedural schedule, cancelling the evidentiary hearing scheduled for February 21, 2018, and closing the record in the proceeding to write a decision. Further, a Notice was issued cancelling the evidentiary hearing.

22. Also on October 19, 2017, almost a week after the self-imposed deadline to intervene, the NGS Parties filed the instant Petition to Intervene.

23. Subsequently, via email correspondence with the active parties and counsel for the NGS Parties on October 19, 2017, the ALJ advised she would keep the record open if any of the parties wanted to respond to the untimely Petition to Intervene. UGI's counsel informed the ALJ, the NGS Parties, and the active parties that it intended to file an Answer to the untimely Petition to Intervene.

24. On October 25, 2017, the ALJ issued an Amended Interim Order, which reopened the docket, added the NGS Parties back to the service list, kept the procedural schedule suspended, and directed the parties to file any responsive pleadings to the NGS Parties' Petition to Intervene by November 8, 2017.

## **II. STANDARD FOR INTERVENTION**

25. A petition to intervene must set out clearly and concisely: (1) the facts from which the alleged intervention right or interest can be determined, (2) the grounds of the proposed intervention, and (3) the petitioner's position on the issues raised in the proceeding. *See* 52 Pa. Code § 5.73(a).

26. Pursuant to the Commission's regulations, a petition to intervene may be filed by a person claiming, *inter alia*, an interest that may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding. See 52 Pa. Code § 5.72(a). Thus, the Commission's regulations require an intervenor to establish that it has standing to participate in the proceeding.

27. The purpose of the requirement of standing is to protect against improper parties. To meet that requirement, a party must allege and prove an interest in the outcome of the action that surpasses the common interest of all citizens in procuring obedience to the law. To surpass the common interest, the interest is required to be, at least, substantial, direct, and immediate. *Application of Biester*, 487 Pa. 438, 442-443, 409 A.2d 848, 851 (1979) (citing *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 192, 346 A.2d 269, 281 (1975)).

28. Intervention is a matter of discretion for the Commission. See *City of Pittsburgh v. Pa. PUC*, 33 A.2d 641 (Pa. Super 1943); *N.A.A.C.P., Inc. v. Pa. PUC*, 290 A.2d 704 (Pa. Cmwlth. 1972); *PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2011 through 2013*, Docket No. M-2010-2179796, 2011 Pa. PUC LEXIS 1997, at \*20 (May 5, 2011).

### **III. ANSWER TO THE NGS PARTIES' UNTIMELY PETITION TO INTERVENE**

29. UGI respectfully requests that the ALJ deny the NGS Parties' Petition to Intervene and Opposition to Petition for Leave to Withdraw for several reasons.

30. First, the NGS Parties concede their Petition to Intervene is untimely. (Petition to Intervene, pp. 1-2) Late intervention requests "may be denied for that reason alone." *Re Pa. Gas and Water Co.*, 1980 Pa. PUC LEXIS 54, at \*4 (Order Entered May 29, 1980). Indeed, the

evidentiary hearing was cancelled and the record was closed on the same day that the NGS Parties filed their Petition to Intervene, thus further demonstrating the untimeliness of the Petition to Intervene.

31. The NGS Parties also fail to set forth sufficient grounds for the concededly late Petition to Intervene. In general, late interventions are permitted when a party has good cause or a reasonable excuse for the untimely petition to intervene. *See, e.g., Petition of the Official Unsecured Creditors' Committee for Approval of its Plan of Reorganization of Mercer Gas Co. and Application for Approval to Effectuate the Abandonment of Mercer Gas Company's Gas Service through the Plan of Reorganization*, 71 Pa. PUC 19, 1989 Pa. PUC LEXIS 144, at \*6 (Order Entered Sept. 15, 1989); *Re S.T.S. Motor Freight, Inc.*, 54 Pa. PUC 343, 1980 Pa. PUC LEXIS 44, at \*2-3 (Order Entered June 19, 1980); 52 Pa. Code § 5.74(b)(1)-(2).

32. In its Petition to Intervene, the NGS Parties aver that the Petition to Intervene is late because of: (1) “a misunderstanding of the import of the proceeding based upon the change of RESA counsel in the intervening time between” the 2016 Base Rate Case “and the instant filing”; and (2) “the inherent difficulties in re-establishing the involvement.” (Petition to Intervene, p. 1)

33. These reasons are insufficient grounds for the NGS Parties to intervene late in this proceeding. The NGS Parties’ contention that the Petition to Intervene was late due to a change of counsel for RESA between the 2016 Base Rate Case and the instant filing as well as the difficulties in re-establishing involvement overlooks that RESA’s (and Shipley’s) current counsel was served with the Daily Metering Petition five months ago on May 31, 2017. Since that time, the NGS Parties have been served with: (1) UGI’s amended Daily Metering Petition on June 2, 2017; (2) the Company’s proposed *pro forma* tariff language along with a *pro forma* rate

calculation for the Retail Markets Rider on June 15, 2017; (3) the pleadings of OCA and OSBA in June 2017; (4) I&E's Notice of Appearance on August 24, 2017; (5) the prehearing conference notice issued on August 28, 2017; and (6) the prehearing conference order dated August 30, 2017. Further, UGI's counsel spoke with the NGS Parties' counsel on October 11, 2017, about the failure to intervene. Counsel for the NGS Parties advised that if the NGS Parties did not intervene by October 13, 2017, they would not be intervening at all.

34. In light of the above, the NGS Parties' assertion of a "misunderstanding" and "inherent difficulties in re-establishing the involvement" do not constitute good cause for its very late intervention. *See Joint Petition of Metro. Edison Co. and Pa. Elec. Co. for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053, P-2009-2093054, p. 10 (Order Entered Nov. 6, 2009) ("[T]he illness of ARIPPA's Executive Director simply does not establish good cause for a delay of over three months from having received actual service of the Petition until the filing of its request for intervention.").

35. Further, the NGS Parties' attempt, through their Petition to Intervene, to oppose UGI's uncontested Petition to Withdraw the Daily Metering Petition should be denied. None of the parties who timely intervened in this proceeding support the Daily Metering Petition. Likewise, in UGI's 2016 Base Rate Case, no parties supported RESA's daily metering proposal. Therefore, it was incumbent on RESA (and Shipley) to timely intervene in this proceeding and support its proposal. However, the NGS Parties' counsel advised UGI's counsel on October 11, 2017, that RESA would never be intervening in this proceeding if it failed to intervene by October 13, 2017. UGI relied on that representation and the fact that the NGS Parties did not intervene on October 13, 2017, when UGI filed the unopposed Petition to Withdraw on October 15, 2017.

36. At this late stage of the proceeding, the NGS Parties should not be permitted to intervene and oppose UGI's Petition to Withdraw. The active parties agreed to a schedule and, after the NGS Parties failed to timely intervene, agreed that the Daily Metering Petition should be withdrawn without prejudice and the record closed. Therefore, the ALJ properly suspended the litigation schedule and closed the record.<sup>2</sup> Allowing the NGS Parties to intervene at this stage of the proceeding will clearly be disruptive because it will require the record to be reopened and a new modified litigation schedule. Moreover, it must be remembered that none of the active parties support the proposal in the Daily Metering Petition. Allowing the NGS Parties' late intervention would force the active parties that timely intervened to incur additional time and expense to litigate an unsupported proposal simply because the NGS Parties' elected to wait almost five months and until the day that the record was closed before they sought to intervene.

37. Conversely, UGI's withdrawal of the Daily Metering Petition would not prejudice any of the parties and would conserve the parties' and the Commission's time and resources. UGI's Petition to Withdraw was made without prejudice to submit a similar proposal at a later date and/or for any of the parties to address similar issues in a subsequent filing or proceeding. As a result, to the extent that the NGS Parties, or any other party, wants to re-raise these issues in a subsequent proceeding, they may do so. Consequently, withdrawal of the Daily Metering Petition benefits all parties and the Commission because it avoids the need to incur time and resources to litigate a proposal that is not supported by any of the active parties. Thus, the better use of the parties' and the Commission's time and resources is to withdraw the Daily Metering Petition without prejudice and allow the parties to re-raise these issues in a future proceeding.

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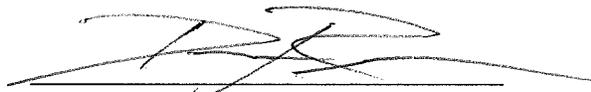
<sup>2</sup> As noted previously, the ALJ's October 25, 2017 Amended Interim Order reopened the docket but kept the procedural schedule suspended.

38. For these reasons, UGI respectfully requests that the ALJ deny the NGS Parties' late-filed Petition to Intervene.

**IV. CONCLUSION**

WHEREFORE, UGI Utilities, Inc. respectfully requests that Administrative Law Judge Elizabeth H. Barnes deny the Retail Energy Supply Association and Shipley Energy's Petition to Intervene Out of Time and Opposition to Petition for Leave to Withdraw.

Respectfully submitted,



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Dated: October 31, 2017

*Attorneys for UGI Utilities, Inc. – Gas Division*

**AFFIDAVIT**

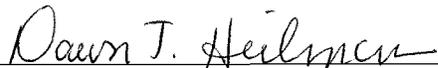
COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF DAUPHIN )

SS:

CHRISTOPHER T. WRIGHT, being duly sworn according to law, deposes and states that he is Counsel to UGI Utilities, Inc., and that in this capacity, he is authorized to and does make this affidavit for them, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Christopher T. Wright, Esquire

Signed and sworn to before me on  
October 31, 2017, by  
Christopher T. Wright making statement.

  
\_\_\_\_\_  
Notary Public

My commission expires 9/4/2021.

(SEAL)

