

**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;	:	P-2017-2607269
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)	:	

**INITIAL DECISION GRANTING PETITION FOR
LEAVE TO WITHDRAW PETITION**

Before
Elizabeth H. Barnes
Administrative Law Judge

HISTORY OF PROCEEDINGS

On October 16, 2017, UGI Utilities, Inc. – Gas Division (“Petitioner” or “UGI”) filed an unopposed Petition for Leave to Withdraw the above-captioned Petition (“Daily Metering Petition”). Petitioner requests Docket No. P-2017-2607269 be closed without prejudice such that a similar petition may be filed at a future time. On October 19, 2017, the Retail Energy Supply Association (RESA) and Shipley Choice, LLC d/b/a Shipley Energy (Shipley) (Collectively RESA, *et al*) filed a Petition to Intervene Out of Time and Opposition to Petition for Leave to Withdrawal (Petition to Intervene). On October 25, 2017, an Amended Interim Order was entered reopening the record and giving the parties until November 8, 2017 to file a written response to the Petition to Intervene. On October 31, 2017, UGI filed an Answer to the Petition to Intervene. RESA *et al.*’s Petition to Intervene is ripe for a decision. On November 7, 2017, the Office of Small Business Advocate (“OSBA”), filed a response not

opposing the Petition to Intervene. On November 8, 2017, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a letter indicating that it would not be filing a response. UGI’s Petition for Leave to Withdraw the Daily Metering Petition is also ripe for a decision.

FINDINGS OF FACT

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 was filed pursuant to a settlement in UGI’s 2016 base rate case proceeding (“2016 Base Rate Case Settlement”).

3. During the 2016 base rate case, only RESA proposed that UGI be required to install daily metering facilities for all Rate IS and Rate DS accounts.

4. 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.

See *Pa. Pub. Util. Comm'n v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2015-2518438, *et al*, pp. 22-23, 43 (Order entered Oct. 14, 2016).

5. On June 2, 2017, UGI filed an amended Daily Metering Petition to primarily clarify the rate schedules to which the Retail Markets Rider would apply.

6. On June 15, 2017, UGI filed its proposed pro forma tariff language along with a pro forma rate calculation for the Retail Markets Rider.

7. All parties in the 2016 base rate case, including RESA, 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.

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

9. On June 29, 2017, the OSBA filed a Notice of Intervention, Public Statement, and Verification.

10. On August 24, 2017, I&E filed a Notice of Appearance.

11. No other parties intervened in this proceeding.

12. On August 28, 2017, the Commission issued a Prehearing Conference Notice, which was served on all parties to the 2016 base rate case.

13. On August 30, 2017, a Prehearing Conference Order was served on all parties to the 2016 base rate case.

14. On September 26, 2017, the parties filed their prehearing memoranda.
15. UGI, I&E, OCA, and OSBA were the only parties to appear and participate at the prehearing conference on September 28, 2017.
16. On September 29, 2017, a Procedural Order establishing the procedural schedule and amending the service list/parties of record was issued.
17. On October 3, 2017, a Hearing Notice was issued scheduling an evidentiary hearing on February 21, 2018.
18. On October 16, 2017, Petitioner filed a Petition for Leave to Withdraw the above-captioned Petition.
19. On October 19, 2017, a Notice of Cancellation and an Interim Order were entered suspending the procedural schedule, cancelling the February 21, 2018 evidentiary hearing, and closing the record for decision writing.
20. On October 19, 2017, RESA *et al.* filed a Petition to Intervene Out of Time and Opposition to Petition for Leave to Withdrawal.
21. On October 25, 2017, an Amended Interim Order was entered reopening the record and giving the parties until November 8, 2017 to file a written response to the Petition to Intervene.
22. On October 31, 2017, UGI filed an Answer to the Petition to Intervene.
23. On November 7, 2017, OSBA filed a response to the Petition to Intervene.
24. On November 8, 2017, I&E filed a letter indicating that it would not be filing a response to the Petition to Intervene.

DISCUSSION

Petition to Intervene

RESA *et al.* admits it received proper service of the Daily Metering Petition and notice of the prehearing conference but neither appeared at the prehearing conference nor timely sought to intervene in this proceeding. RESA *et al.* offers as an excuse that the failure to timely intervene was due to: 1) a misunderstanding of the import of the proceeding based upon the change of RESA counsel in the intervening time between UGI's rate case and the instant filing; and 2) the inherent difficulties in re-establishing the involvement. RESA avers it has standing as an organization to participate and that its intervention will not cause undue prejudice to any other party. Shipley avers it has standing as a signatory to a prior settlement agreement upon which the matter is premised and as a supplier of affected customers.

Conversely, UGI requests the Petition to Intervene be denied because RESA *et al.*'s counsel was served with the Daily Metering Petition five months ago in addition to every pleading, notice and order. RESA *et al.* failed to appear at the prehearing conference even though it was served with the Notice and Prehearing Conference Order. Additionally, on October 11, 2017, counsel for UGI contacted RESA *et al.*'s counsel, who stated if they did not intervene by October 13, 2017, they would not be intervening in this matter. UGI argues that RESA *et al.* have been afforded more than enough opportunity to intervene and if they should wish to revisit the merits of daily metering in a future proceeding, they would not be prejudiced from doing so.

OSBA does not oppose the Petition to Intervene arguing judicial economy and the public interest would be served by litigating UGI's Daily Metering Petition with RESA as an intervenor now as opposed to in the future.

I&E and OCA did not file responses to the Petition to Intervene and they take no position.

Disposition

The reasons RESA *et al.* offer in support of the late-filed Petition to Intervene are vague and insufficient to constitute a good cause or reasonable excuse for the granting of an untimely petition to intervene. RESA *et al.* are nonspecific as to what “inherent difficulties” it experienced in “re-establishing the involvement.” RESA *et al.* fail to sufficiently explain how a “change of RESA counsel in the intervening time between UGI’s rate case and the instant filing” caused the Petition to Intervene to be late.

The Petition for Leave to Withdraw the above-captioned Petition and other pleadings in this case show that RESA *et al.*’s current counsel was served the Daily Metering Petition on May 31, 2017, as well as all other pleadings, notices and orders leading to the prehearing conference. The same attorney and law firm filed the Petition to Intervene. There has been no change in counsel or any allegation that RESA *et al.* had ineffective assistance of counsel as of May 31, 2017, as the basis of its Petition to Intervene in an untimely fashion. RESA, *et al.* admits to receiving proper notice and service regarding the Daily Metering Petition and subsequent pleadings since May 31, 2017. There appears to be no extenuating factors beyond RESA *et al.*’s control, such as failure to receive notice, ineffective counsel, illness, or emergency. Such averments might constitute good cause if counsel had changed from the time the instant petition had been filed, but it has not. I fail to see how RESA *et al.* has had difficulty in re-establishing involvement when counsel has remained the same since May, 2017.

Additionally, I am persuaded by UGI’s Answer, which states that RESA *et al.*’s counsel had represented to UGI that it would not intervene after October 13, 2017. Relying upon this representation, UGI filed the unopposed Petition for Leave to Withdraw the above-captioned Petition and this presiding officer drafted an Interim Order suspending the schedule, cancelling the February 21, 2018 hearing, and closing the record for decision writing. Clearly, RESA *et al.* had decided for months to not intervene in the instant proceeding. After UGI filed its Petition for Leave to Withdraw the above-captioned Petition, there was a change in legal strategy. However, this alone is insufficient to constitute good cause or a reasonable excuse. Accordingly, the Petition to Intervene shall be denied as untimely. *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 September 15, 2989).

The Commission's Rules of Administrative Practice and Procedure permit the withdrawal of pleadings in contested proceedings, through the filing of petitions which set forth the reasons for the withdrawal. In deciding whether to permit withdrawal of a contested complaint or petition, the presiding officer is to consider the petition to withdraw, any objection thereto, and the public interest. 52 Pa.Code § 5.94.

UGI requests leave to withdraw the Daily Metering Petition without prejudice for the Company to submit a similar proposal later and/or for any of the parties to address similar issues in a subsequent filing or proceeding. This request is unopposed.

UGI filed the pending Daily Metering Petition and served all parties to the 2016 base rate case. The 2016 Base Rate Case Settlement reserved the rights of all parties to the 2016 base rate case to participate in and challenge the Daily Metering Petition. In their answers to the Daily Metering Petition and their prehearing memoranda, I&E, OCA, and OSBA all opposed and identified several concerns with the proposals set forth in the Daily Metering Petition, including the need for the daily metering facilities, the costs of the facilities, and the way those costs would be recovered. RESA was the only party that supported the daily metering proposal in UGI's 2016 base rate case. RESA was properly served with the Daily Metering Petition and subsequent notices and orders. However, RESA elected not to intervene in this proceeding or otherwise support the proposals set forth in the Daily Metering Petition.

Further, Petitioner avers that on October 11, 2017, counsel for UGI contacted counsel for RESA, who confirmed that RESA was served with the Daily Metering Petition and did not intend to intervene or otherwise participate in the instant proceeding if RESA did not intervene by October 13, 2017. RESA did not intervene by October 13, 2017. Given the lack of support by the active parties and the numerous issues and concerns raised by I&E, OCA, and

OSBA, the Company wishes to withdraw the Daily Metering Petition without prejudice for the Company 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. UGI avers that withdrawing the Daily Metering Petition at this time will allow the Company and other parties to further evaluate and consider whether it is reasonable and prudent to install daily meters for Rate IS and DS accounts, including issues related to the associated costs and cost recovery. The withdrawal of the current Daily Metering Petition will prevent the parties and the Commission from incurring substantial time and expense to litigate issues that are currently unsupported by any of the active parties. UGI also avers that withdrawing the Daily Metering Petition without prejudice will allow the parties to revisit these issues at a later date and/or a subsequent proceeding if appropriate.

I have considered the Petition for Leave to Withdraw the above-captioned Petition, the lack of party objections, and the public interest, and have determined that the withdrawal of the Daily Metering Petition should be allowed. The public interest would not be served by requiring the litigation of a petition, which none of the parties support. This would result in an unnecessary burden and costs to the parties and the Commission which also would not be in the public interest. There was no objection by any party to the withdrawal of the Daily Metering Petition. Accordingly, Petitioner's Petition for Leave to Withdraw the above-captioned Petition will be granted and the Daily Metering Petition will be withdrawn.

CONCLUSION

For these above-stated reasons, Petitioner's Petition for Leave to Withdraw the above-captioned Petition shall be granted without prejudice for the Petitioner to submit a similar proposal later and/or for any of the parties to address similar issues in a subsequent filing or proceeding. Additionally, the procedural schedule as adopted in the Procedural Order issued on September 29, 2017, in the instant case shall be suspended and the hearing scheduled for February 21, 2018 shall be cancelled. The case at Docket No. P-2017-2607269 shall be marked closed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. § 501.

2. The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94(a) permit the parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission.

3. In determining whether to permit withdrawal of the pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest. 52 Pa.Code § 5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That UGI Utilities, Inc. – Gas Division's Petition for Leave to Withdraw the above-captioned Petition as amended at Docket No. P-2017-2607269 is granted.

2. That the Petition filed by UGI Utilities, Inc. – Gas Division on May 31, 2017, as amended on June 2, 2017, at Docket No. P-2017-2607269 is withdrawn.

3. That the Retail Energy Supply Association and Shipley Choice, LLC d/b/a Shipley Energy's Petition to Intervene Out of Time and Opposition to Petition for Leave to Withdrawal is denied.

