**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

 :

 v. : R-2017-2640058

 :

UGI Utilities, Inc. – Electric Division :

**ORDER DENYING MOTION IN LIMINE OF**

**UGI UTILITIES, INC. – ELECTRIC DIVISION**

**TO STRIKE THE TESTIMONY OF**

**BUREAU OF INVESTIGATION AND ENFORCEMENT WITNESS**

**JOSEPH KUBAS**

On January 26, 2018, UGI Utilities, Inc. – Electric Division (UGI) filed Tariff Electric - PA P.U.C. Nos. 6 and 2S to become effective March 27, 2018. The subject tariffs as originally filed would increase UGI Electric’s total annual operating revenues by approximately $9.254 million. The total annual increase figure was subsequently revised in supplemental direct testimony submitted by the company to $8.491 million.

On February 5, 2018, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. On February 6, 2018, the Pennsylvania Office of Consumer Advocate (OCA) filed a Formal Complaint at Docket No. C-2017-2646178. On February 12, 2018, the Pennsylvania Office of Small Business Advocate (OSBA) filed a Formal Complaint at Docket No. C-2017-2647268. Formal Complaints were also filed two UGI Electric customers at Docket Nos. C-2017-2647099 and C-2017-3000056.

By Order entered March 1, 2018, the Commission suspended the tariff filings until October 27, 2018, and ordered an investigation into the lawfulness, justness and reasonableness of the rates, rules and regulations contained therein. The Order directed that the matter be assigned to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a Recommended Decision.

A telephonic prehearing conference was held in this proceeding on Thursday, March 22, 2018, at 10:00 a.m. Present for the prehearing conference were counsel to UGI, I&E, OCA and OSBA. Also present was Barbara McDade, one of the customers who filed a formal complaint. The parties discussed and agreed upon several procedural matters in this case, including a litigation schedule, modifications to the Commission’s discovery regulations and the need for public input hearings. By Scheduling Order dated March 30, 3018, the various procedural determinations established during the prehearing conference were memorialized. Prepared written testimony was submitted by the parties as directed in the scheduling order, and evidentiary hearings were held on June 11-12, 2018.

On June 8, 2018, UGI filed a Motion in Limine of UGI Utilities, Inc. – Electric Division to Strike the Testimony of Bureau of Investigation and Enforcement (I&E) witness Joseph Kubas. In its motion, UGI requested that the direct and surrebuttal testimony of Mr. Kubas (I&E Statement Nos. 5 and 5-SR) be stricken on the basis that the issue addressed therein is not relevant to the issues to be determined in this proceeding. UGI argues that the entirety of Mr. Kubas’ testimony and the exclusive focus addressed therein is the calculation and content of UGI’s quarterly earnings reports (QER), the most recent of which was filed nine months ago. UGI notes that Mr. Kubas argues in his testimony against the use of employing a fully projected future test year (FPFTY) in the calculation of its QERs. It argues that this issue is not relevant to the issues in the present base rate case, which involves a determination of the justness and reasonableness of the rates, rules and regulations reflected in the proposed tariffs. UGI argues that I&E’s argument should be raised in a complaint filed in response to a QER filed by UGI, or in an industry-wide proceeding, rather than in an individual company base rate proceeding. UGI cites to Mr. Kubas’ testimony wherein he stated:

1. Do you have a recommendation regarding the inclusion of the net plant and annual depreciation expense related to “plant to be added in the FTY and FPFTY in UGI Electric’s quarterly earnings reports?
2. Yes. I recommend that the Company not be permitted to include net plant and corresponding annual depreciation expense related to plant not yet in service, including FTY and FPFTY plant, in any future QERs.

I&E St. No. 5, p. 8.

 According to UGI, “Mr. Kubas’s recommended actions regarding QERs filed by a public utility outside the context of a base rate proceeding is irrelevant to the evaluation of the rates and terms of service that are the subject of a public utility’s base rate increase”. (UGI Motion in Limine, pp. 6-7). In further support of its argument that base rate cases and QER filings are separate proceedings with distinct filing requirements, UGI notes Mr. Kubas’s surrebuttal testimony where he acknowledges, “Yes, inclusion of FPFTY plant is appropriate in base rate cases.” (I&E Statement No. 5-SR). Finally, UGI argues that a determination on the QER issue raised by Mr. Kubas will have absolutely no effect on this base rate case. UGI states that it will have no impact on the amount of the increase granted in this proceeding, or how the increase is allocated or on rate design.

UGI requests that I&E Statements 5 and 5-SR be stricken and disregarded. It is UGI’s position that a determination on this issue should be made in the context of a statewide proceeding involving all public utilities and stakeholders. It argues that, “[s]uch a proceeding would enable all interested parties to evaluate and address this issue.” (UGI Motion in Limine, p. 7).

 In response, I&E cites to UGI Statement No. 1, the testimony of UGI witness Paul Szykman and associated exhibits, where UGI’s operations are projected to produce an overall rate of return on rate base of 3.2 percent, which equates to a return on common equity of just 1.92 percent for the twelve months ending September 30, 2019. I&E argues that this claim triggered an investigation by I&E into UGI’s projected earnings claim in this proceeding. As part of its investigation, I&E reviewed UGI’s QER filings. I&E argues that its investigation and review of UGI’s QERs is relevant to the entire issue of rate of return and return on equity discussed in the company’s testimony. I&E argues, therefore, that Mr. Kubas’s testimony is relevant to the issues in this proceeding and, accordingly, UGI’s motion to strike should be denied.

 The Office of Consumer Advocate added that it supports a wide view of relevance in base rate proceedings.

We will deny UGI’s motion and allow Mr. Kubas’s testimony to remain a part of the evidentiary record. We believe that, in the most general sense, there may be some relevance in reviewing the claims made by UGI in past QER filings while investigating and evaluating the company’s claims of projected future earnings in this proceeding. We will, therefore, admit Mr. Kubas’s testimony into the evidentiary record. We tend agree with UGI, however, that any Commission decision on Mr. Kubas’s ultimate recommendation, that no projected plant additions should be included in future QERs, would have no impact on either the amount of increase granted in this proceeding, or on the allocation or rate design of that increase. We also tend to agree with UGI that a determination on Mr. Kubas’s recommendation would be more appropriately made in the context of a QER filing proceeding or an industry-wide proceeding, where all utilities that may be affected by resolution of this issue would have an opportunity to participate. Accordingly, although we are denying UGI’s motion to strike, we retain the right to decide what evidentiary weight, if any, to assign to any testimony in general or Mr. Kubas’s testimony in particular.

ORDER

THERFORE,

 IT IS ORDERED:

1. That the Motion in Limine of UGI Utilities, Inc. – Electric Division to Strike the Testimony of Bureau of Investigation and Enforcement Witness Joseph Kubas is denied.
2. That I&E Statement Nos. 5 (Direct Testimony of Joseph Kubas) and 5-SR (Surrebuttal Testimony of Joseph Kubas) are admitted into the evidentiary record in this proceeding.

Date: June 25, 2018

 Steven K. Haas

 Administrative Law Judge

 Andrew M. Calvelli

 Administrative Law Judge

**R-2017-2640058 - PA PUBLIC UTILITY COMMISSION v. UGI UTILITIES INC**

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