**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2021-3030218

:

Office of Consumer Advocate : C-2022-3030735

Office of Small Business Advocate : C-2022-3030983

Paula Mercuri : C-2022-3030898

:

v. :

:

UGI Utilities, Inc. – Gas Division :

**SCHEDULING ORDER**

On January 28, 2022, UGI Utilities, Inc. - Gas Division (“UGI Utilities”) filed

Supplement No. 32 to UGI Tariff Gas - Pa. P.U.C. Nos. 7 and 7S to become effective March 29, 2022, which proposed changes in rates, rules, and regulations calculated to produce $82.7 million (7.8%) in additional annualrevenues. UGI Utilities stated the requested increases are necessary to earn a fair return on investments, to support ongoing Commission approved infrastructure replacement programs, to enhance information technology systems, to increase training opportunities for personnel, to implement a Weather Normalization Adjustment tariff rider, and to recover higher levels of certain operating expenses which support the provision of safe and reliable gas distribution services.

On February 3, 2022, the Office of Consumer Advocate (“OCA”) filed a formal

complaint and public statement at docket number C-2022-3030735. Also on February 3, 2022, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a notice of appearance. On February 7, 2022, a UGI Utilities gas customer, Paula Mercuri, filed a formal complaint at docket number C-2022-3030898.

On February 15, 2022, a petition to intervene and answer was filed by the

Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-

PA”). On February 23, 2022, a petition to intervene was filed by the Commission on Economic Opportunity (“CEO”).

On February 24, 2022, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), the Commission suspended the filing by operation of law until October 29, 2022, unless permitted by the Commission to become effective at an earlier date. The Commission also instituted an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed tariff filing, as well as a consideration of the lawfulness, justness and reasonableness of the exiting rates, rules, and regulations. The Commission assigned the case to the Office of Administrative Law Judge for the prompt scheduling of hearings as may be necessary culminating in the issuance of a Recommended Decision.

On February 24, 2022, a hearing notice was issued establishing a telephonic prehearing conference for this matter for March 2, 2022 at 10:00 a.m. and assigning us as the presiding officers.

On March 1, 2022, NRG Energy, Inc. (“NRG”) filed a petition to intervene.

The prehearing conference convened on March 2, 2022 as scheduled. The following parties were present: Devin T. Ryan, Esq., Michael S. Swerling, Esq., and Timothy K. McHugh, Esq., on behalf of UGI Utilities; Carrie B. Wright, Esq., on behalf of I&E; Darryl A. Lawrence, Esq., and Mackenzie Battle, Esq., on behalf of OCA; Steven C. Gray, Esq., on behalf of OSBA; John W. Sweet, Esq., on behalf of CAUSE-PA; Karen O. Moury, Esq., on behalf of NRG; Joseph L. Vullo, Esq., on behalf of CEO; and Paula Mercuri on behalf of herself.

As an initial matter, no party objected that the formal complaints filed by OCA, OSBA and Ms. Mercuri be consolidated with the Commission’s investigation. Next, no party objected to the petitions to intervene filed by CAUSE-PA, CEO and NRG. Accordingly, the three aforesaid formals complaint were consolidated with this matter and the petitions to intervene were granted, as confirmed in the ordering paragraphs below.

Next, the parties agreed to the following litigation schedule:

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| --- | --- |
| Non-Company Direct Testimony | April 20, 2022 |
| All parties’ Rebuttal Testimony | May 17, 2022 |
| All parties’ Surrebuttal Testimony | May 27, 2022 |
| Written Rejoinder or Outlines | June 1, 2022 |
| Evidentiary Hearings | June 2-3, 2022 |
| Main Briefs | June 24, 2022 |
| Reply Briefs | July 6, 2022 |

The evidentiary hearings will be held telephonically and begin at 10:00 a.m.

The parties also discussed the need to modify the Commission’s regulations regarding discovery. The parties agreed to the following modifications:

1. Answers to written interrogatories shall be served in-hand within

ten (10) calendar days of service. After the service of written rebuttal

testimony, answers to written interrogatories shall be served in-hand

within seven (7) calendar days of service.

1. Responses to requests for document production, entry for inspection,

or other purposes must be served in-hand within ten (10) calendar days.

After the service of written rebuttal testimony, responses to requests for

document production, entry for inspection, or other purpose shall be served

in-hand within seven (7) calendar days of service.

1. Requests for admissions will be deemed admitted unless answered within

ten (10) calendar days or objected to within five (5) calendar days of service.

(d) Objections to interrogatories shall be communicated orally within three (3)

calendar days of service of the interrogatories; unresolved objections shall

be served in writing within five (5) days of service of the interrogatories.

Objections to interrogatories served on a Friday shall be communicated

orally within four (4) calendar days, and unresolved objections shall be

served in writing within six (6) days of service of the interrogatories.

(e) Motions to dismiss objections and/or direct the answering of interrogatories

shall be filed within three (3) calendar days of service of the written

objections.

(f) Discovery requests and discovery related pleadings (such as objections,

motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

(g) On the Record Data requests will be provided within five (5) calendar days.

OCA requested public input hearings. Specifically, OCA requested two public input hearings be held in smart hearing format, if feasible, or telephonically. Commission policy provides at least one public input hearing should be held in a utility’s service area if the Commission determines there is substantial public interest in a rate proceeding. 52 Pa.Code § 69.321(b). We find substantial public interest in this proceeding exists to warrant holding two public input hearings. After discussion, the parties proposed public input hearings be held on one day, either on April 12, 13, or 14, 2022 with one in the afternoon and one in the evening. After further investigation, the Office of Administrative Law Judge determined the public input hearings will take place telephonically at 1:00 p.m. and 6:00 p.m. on a date to be determined.

UGI Utilities is to advertise the public input hearings in a timely fashion and to work with any interested parties in regard to the wording of the public input hearing announcements, and where and how the public input hearing announcements are to be published and/or broadcast. Prior to the initial public input hearing, UGI Utilities is to file with the Secretary’s Bureau, with a copy to the presiding officers, a document which provides the wording of the public input hearing announcement, where it appeared and on what dates.

A discussion was also held regarding the need for a protective order, if any. UGI Utilities indicated that it expected to file a motion for a protective order within the next few days. Therefore, any motion will be addressed after its filing. The parties are reminded that the treatment of information alleged to be proprietary must be balanced against Commission regulations that also provide that the Commission’s records, including the record of this proceeding, may be accessed by the public. As a result, while the parties can exchange whatever information they allege to be proprietary amongst themselves, they are encouraged to minimize or eliminate submitting for admission into the record material that is marked as proprietary to ensure greatest public access to the record of this proceeding.

Finally, the parties were reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. The parties are reminded, however, that decisions of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Any settlement submitted for approval must be supported by substantial evidence.

To the extent there is no settlement, the parties will be required to attach to their briefs the standard uniform tables that conform the parties’ various positions on particular issues. The parties will also be required to propose a common outline for the submission of briefs. Those tables will be provided at the evidentiary hearings in June 2022 if necessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaints filed by the Office of Consumer Advocate at docket number C-2022-3030735, the Office of Small Business Advocate at docket number

C-2022-3030983, and Paula Mercuri at docket number C-2022-3030898, are hereby consolidated with the Commission’s investigation at docket number R-2021-3030218.

1. That the petitions to intervene filed by the Coalition for Affordable Utility

Services and Energy Efficiency in Pennsylvania, the Commission on Economic Opportunity, and NRG Energy, Inc., are granted.

1. That the following schedule is adopted for this proceeding:

|  |  |
| --- | --- |
| Non-Company Direct Testimony | April 20, 2022 |
| All parties’ Rebuttal Testimony | May 17, 2022 |
| All parties’ Surrebuttal Testimony | May 27, 2022 |
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1. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on the presiding officers. The parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents listed above so that the documents are received in-hand by the parties and presiding officers no later than 4:30 p.m. on the dates listed. Parties may serve the documents listed above via e-mail to meet this requirement, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. Parties shall not file testimony with the Commission, but shall file a certificate of service.
2. That written testimony shall comply with the requirements of 52 Pa.Code § 5.412 and shall be marked with numerical, sequential statement numbers.
3. That all parties shall comply with the provisions of 52 Pa.Code § 5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
4. That the parties shall conduct discovery pursuant to 52 Pa.Code §§ 5.321-5.373, as modified above. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. All motions to compel shall contain a certification by counsel setting forth the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel does not contain this certification, the parties will be directed to pursue informal discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372.
5. That any evidentiary hearing will be held telephonically and will commence at 10:00 a.m. unless changed by the presiding officers.
6. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.
7. That any evidentiary hearing in this matter constitutes a formal legal proceeding and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
8. That any provision of this order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: March 3, 2022 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

/s/

Gail M. Chiodo

Administrative Law Judge

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