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July 25, 2022

VIA ELECTRONIC FILING

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

**Re: Petition Requesting Initiation of a Proceeding on Federal Funding
Opportunities for Utilities Under the Infrastructure Investment and Jobs Act;
Docket No. P-2022-3032929**

Dear Secretary Chiavetta:

Please find UGI Utilities Inc., - Electric and Gas Division's Petition to Intervene and Answer to Petition of the Office of Consumer Advocate, Office of Small Business Advocate, and the Pennsylvania Utility Law Project in the above-referenced docket.

If you have any questions, please contact me directly at (610) 992-3763.

Very truly yours,

/s/ Michael S. Swerling
Michael S. Swerling
Counsel for UGI

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Requesting Initiation of	:	
A Proceeding on Federal Funding	:	Docket No. P-2022-3032929
Opportunities for Utilities Under	:	
The Infrastructure and Jobs Act	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that I have, this 25th day of July 2022, served a true and correct copy of the foregoing document in the manner and upon the persons listed below in accordance with requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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Dated: July 25, 2022

/s/ Michael S. Swerling
Michael S. Swerling

/s/ Michael S. Swerling
Michael S. Swerling

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Requesting Initiation of	:	
A Proceeding on Federal Funding	:	Docket No. P-2022-3032929
Opportunities for Utilities Under	:	
The Infrastructure and Jobs Act	:	

**UGI UTILITIES, INC. – ELECTRIC DIVISION’S AND GAS DIVISION’S
PETITION TO INTERVENE AND ANSWER TO THE PETITION OF THE OFFICE OF
CONSUMER ADVOCATE, OFFICE OF SMALL BUSINESS ADVOCATE, AND THE
PENNSYLVANIA UTILITY LAW PROJECT**

I. INTRODUCTION

UGI Utilities, Inc. – Electric Division (“UGI Electric”) and Gas Division (“UGI Gas”), collectively referred to herein as the “Company”, file this Petition to Intervene (pursuant to 52 Pa. Code § 5.71 et seq.) and Answer (pursuant to 52 Pa. Code § 5.61(e)) to the *Petition Requesting Initiation of a Proceeding on Federal Funding Opportunities for Utilities Under the Infrastructure and Jobs Act*, at Docket No. P-2022-3032929, with the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned docket and states as follows:

1. UGI Utilities, Inc. (“UGI”) is the wholly owned, utility subsidiary of UGI Corporation (“UGI Corp.”). UGI has two operating divisions, UGI Gas and UGI Electric.
2. UGI Electric primarily provides electric distribution services to approximately 62,000 customers in Luzerne and Wyoming counties in Northeastern Pennsylvania, pursuant to certificates of public convenience granted by the Commission. UGI Electric is a “public utility” and an “electric distribution company” (“EDC”) within the meaning of Sections 102 and 2803 of

the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

3. UGI Gas serves approximately 650,000 residential, commercial and industrial natural gas customers located in 45 of Pennsylvania’s total 67 counties and spanning more than 700 municipalities. UGI Gas operates approximately 12,000 miles of gas distribution mains and 300 miles of gas transmission mains in the Commonwealth of Pennsylvania. UGI Gas provides service to the following cities: Allentown, Bethlehem, Easton, Harrisburg, Hazelton, Lancaster, Lebanon, Reading, Scranton, Wilkes-Barre, Lock Haven, Pittston, Pottsville, and Williamsport. UGI Gas is a Pennsylvania certificated “public utility” and a “natural gas distribution company” (“NGDC”) as those terms are defined in Sections 102 and 2202 of the Public Utility Code, 66 Pa.C.S. §§ 102 and 2202, subject to the regulatory jurisdiction of the Commission.

4. The name and address of UGI Electric’s attorney is:

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5. On June 10, 2022, the Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”) and the Pennsylvania Utility Law Project (“PULP”), collectively “the Petitioners,” filed a *Petition Requesting Initiation of a Proceeding on Federal Funding Opportunities for Utilities Under the Infrastructure and Jobs Act* (“Petition”), at Docket No. P-2022-3032929.

6. According to the Petitioners, the federal Infrastructure Investment and Jobs Act (“IIJA”) established a significant source of grant funding for utility infrastructure projects. (Petition at 1.) These grants provide opportunities for electric grid hardening and resiliency, transmission line project loans, Smart Grid Investment Matching Grant Program funds, cybersecurity enhancements for small utilities, and similar grants opportunities for water utilities. (Petition at 2-3.)

7. The Petitioners also state that these grant opportunities “will significantly benefit Pennsylvania residents and utility customers...[and] is also in the public interest to foster cooperation among the Commission, utilities, and other stakeholders” to obtain such funds quickly. (Petition at 3.)

8. To that end, the Petitioners recommend that the Commission initiate a docket through which utilities submit plans/reports to the Commission for review regarding their IIJA grant seeking activities. (Petition at 4.) More specifically, the Petitioners state that utilities should develop and file IIJA grant plans, which are open for public input and are accessible by other Pennsylvania state agencies. (Petition at 4.)

II. STANDARDS FOR INTERVENTION

9. The Commission’s regulations at 52 Pa. Code §§ 5.71-5.76 establish the standards and requirements for a party to intervene in an action before the Commission. Section 5.72 sets forth the eligibility requirements for a party to intervene, and provides, in pertinent part, as follows:

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that

intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which 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.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa. Code § 5.72. The eligibility requirements for an interested party to intervene in an action before the Commission is less strict and easier to satisfy than the common law standard for intervention. *See Application of Metropolitan Edison Co. for Approval to Construct an Electric Generating Unit Fueled by Natural Gas*, Docket No. A-110300, 1994 Pa. PUC LEXIS 52 (Order entered Feb. 25, 1994) (citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)).

10. The Company has an interest that may be directly affected by the Commission's determination in this proceeding. UGI Electric is an EDC that could seek grant funding under the IIJA and, if the Petition is approved, would be subject to any Commission order requiring the preparation/filing of federal grant funding plans/reports as proposed in the Petition. UGI Gas has a similar interest that may be directly affected by the Commission's determination in this proceeding. UGI Gas is an NGDC that could play a direct or indirect role in grant applications resulting from the IIJA, including those related to energy efficiency¹; hydrogen research and

¹ IIJA, Title V.

development²; grants for charging and fueling infrastructure³; cybersecurity for the energy sector⁴; enhanced grid security⁵; and additional funds for Low Income Home Energy Assistance Plans (“LIHEAP”)⁶. Accordingly, if the Petition is approved, UGI Gas could be subject to a Commission order requiring the preparation/filing of federal grant funding plans/reports as proposed in the Petition.

11. Accordingly, the Commission’s resolution of the issues identified in this proceeding will directly affect the Company’s operations, procedures and compliance with any adopted federal grant reporting requirements.

12. The Company submits that no other party can or will adequately protect its interests in this proceeding.

III. ANSWER TO PETITION

13. The Commission’s regulations at 52 Pa. Code § 5.61(e) establish the method in which a party shall answer a petition. Specifically, the Answer to Petition must: (1) set forth the party’s position on the issue raised in the petition; (2) state the party’s standing to participate in the proceeding; and (3) provide the relevant facts and law relied upon.

14. Standing to participate is determined based on whether a party has an interest in the subject matter of a proceeding that is “direct, immediate and substantial.” *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). As stated in Paragraphs

² IJA, Title III, Subpart B.

³ IJA, Title I, Subpart D.

⁴ IJA, Title I, Subpart B.

⁵ *Id.*

⁶ IJA, Title 4.

10-12 above, the Company would be impacted by a Commission determination in this proceeding in a direct, immediate and substantial manner.

15. Regarding the Company's response to the Petition, to the extent it could be construed as requiring public utilities to apply for federal funding under the IIJA, the Commission does not have such authority clearly conferred upon it by statute. *Pittsburgh Railways Co. v. Pennsylvania Public Utility Commission*, 237 A.2d 602 (1967).

16. Public utilities should be free to decide if and what federal grants to apply for within their management discretion.⁷ The Commission also should not be involved in managing the grant development and application process for public utilities (as will be further explained below). With that said, the Company agrees that pursuing available grant funds under the IIJA will serve the public interest.

17. The Petitioners asked the Commission to initiate a docket for utilities to submit reports regarding IIJA grant activities. (Petition at 4.) The Petitioners claim that doing so may achieve greater coordination and may enhance the likelihood that utilities will receive grant awards. (Petition at 3-4.) As support, the Petitioners cite to the White House guidebook to the IIJA, which states that the grant funds will require significant coordination between federal and state governments and stakeholders. (Petition at 3.) However, the referenced coordination is more relevant when federal grant funds are provided directly to state governments/agencies who

⁷ See *National Fuel Gas Corp. v. PAPUC*, 464 A.2d 546, 559 (Aug. 4, 1983), which explains "As a general matter, utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions, including decisions related to the necessity and propriety of operating expenses, unless, on the basis of record evidence, it finds an abuse of the utility's managerial discretion. *City of Philadelphia v. Pennsylvania Public Utility Commission*, 174 Pa. Superior Ct. 641, 102 A.2d 428 (1954)."

are responsible to award the funds through state-sponsored grant opportunities. That would apply, for example, if the federal government provided funding directly to the Commonwealth of Pennsylvania or to the Commission, who then created grant offerings for public utilities.

18. Additionally, the Petitioners state that utilities should develop and file IJJA grant plans with the Commission, which are open for public input and are accessible by other Pennsylvania state agencies. (Petition at 4.) Requiring utilities to draft and file plans for acquiring IJJA funds is not likely to improve a utility's chances of receiving IJJA funds. First, the grant application process is anticipated to be a highly competitive process that may involve the disclosure of projects or operational details that are not public. As such, responses to grant applications must maintain confidential status. Accordingly, neither the general public nor other applicants should have access to this sensitive information.

19. Second, with regard to the Petitioners' request that utilities file a IJJA grant funding plan with the Commission, each grant is different and has specific application requirements. Therefore, trying to develop a plan to apply for all IJJA funding opportunities likely will not add value, especially considering that the grant application responses will be confidential. Moreover, certain grants may have differing timelines which would not comport with the filing of a singular funding plan by utilities.

20. Third, to the extent the Petitioners are envisioning that utilities would prepare separate plans for each funding opportunity, such an approach is unnecessary. Requiring utilities to draft and file grant funding plans that will be reviewed in a Commission docket may cause delays in submitting IJJA funding applications. Such delays could jeopardize a utility's chances

of receiving awards in a deadline-driven and highly competitive process and risk being unable to meet project owner/developer timelines.

21. Accordingly, creating a docket in which utilities must file grant funding plans and reports is not necessary and likely will not improve a utility's chances of receiving grant awards.

22. Finally, the Commission already has the authority to review whether a utility's infrastructure costs are recoverable through rates. Under this authority, parties to a rate proceeding may request information concerning a utility's IIJA funding efforts. To the extent requested, the Company can provide that information on a Confidential basis, so as not to disclose its efforts to the general public. The Petitioners' efforts here request an outcome that would simply place additional administrative burdens on the utilities and the Commission itself.

WHEREFORE, the Company respectfully requests that the Commission grant this Petition to Intervene and consider UGI Electric's Answer to the Petition.

Respectfully submitted,

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