

COMMONWEALTH OF PENNSYLVANIA



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April 17, 2023

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:

Attached for electronic filing please find the Answer of the Office of Consumer Advocate to the Petition of UGI Utilities, Inc. Gas and Electric Divisions for Clarification of the March 31, 2023 Order of the Public Utility Commission in the above-referenced proceeding. As required under the Commission's regulations, the Office of Consumer Advocate's Answer is accompanied by a verification in accordance with 52 Pa. Code Section 1.36.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ David T. Evrard
David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
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Enclosures:

cc: Office of Administrative Law Judge (**email only:** crainey@pa.gov)
Paul Diskin, Bureau of Technical Utility Services (**email only:** pdiskin@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

*344563

CERTIFICATE OF SERVICE

Petition Requesting Initiation of a :
Proceeding on Federal Fundin : Docket No. P-2022-3032929
Opportunities for Utilities under the :
Infrastructure Investment and Jobs Act :

I hereby certify that I have this day served a true copy of the following document, the Answer of the Office of Consumer Advocate to the Petition of UGI Utilities, Inc. -- Gas and Electric Divisions for Clarification of the March 31, 2023 Order of the Public Utility Commission, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of April 2023.

SERVICE BY E-MAIL ONLY

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Phone: (717) 783-5048
Dated: April 17, 2023
*344568

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of the Office of Consumer Advocate,	:	
the Office of Small Business Advocate and the	:	
Pennsylvania Utility Law Project	:	Docket No. P-2022-3032929
Requesting Initiation of a Proceeding on	:	
Federal Funding Opportunities Under the	:	
Infrastructure Investment and Jobs Act	:	

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE PETITION OF UGI UTILITIES, INC. – GAS & ELECTRIC DIVISIONS
FOR CLARIFICATION OF THE MARCH 21, 2023 ORDER OF THE
PUBLIC UTILITY COMMISSION

On April 5, 2023, UGI Utilities, Inc. – Gas & Electric Divisions (UGI) filed a Petition for Clarification (Petition) of the Public Utility Commission’s (Commission) March 21, 2023 Order (Order) concerning jurisdictional utilities and their pursuit of funding opportunities available under the federal Infrastructure Investment and Jobs Act (Pub. L. No. 117-58, 135 Stat. 429 (2021)) (IIJA). In its Petition, filed pursuant to 52 Pa. Code § 5.572, UGI seeks clarification of two aspects of the Order: (1) whether the costs incurred by utilities to prepare, apply, administer and execute on opportunities for IIJA funding will qualify for deferral and regulatory asset treatment, along with offsetting funding proceeds; and (2) a request that where the Commission itself is eligible to receive and pursues funding under the IIJA, that it inform Pennsylvania utilities so that they can plan for any related impact the additional funding may have on their operations. Pursuant to 52 Pa. Code § 5.572(e), the Office of Consumer Advocate (OCA) files this Answer in response to the first of UGI’s requests.¹

¹ The OCA takes no position on UGI’s second request.

Relevant to UGI's request is the fact that in its Order, the Commission provided as follows:

Moreover, as the Commission has an ongoing duty to protect the public from unjust and unreasonable rates, jurisdictional fixed public utilities that accept monies derived from IJJA grants should be directed to provide testimony as to the accounting treatment of the grant money in rate case proceedings filed before the Commission. (Order at 12)

UGI's Petition does not necessarily relate to the accounting treatment for the IJJA funds themselves, but to how the costs incurred by utilities in *pursuing* IJJA funding should be treated and accounted for until they are presented for recovery in a future rate proceeding. It asks the Commission to allow these costs to be tracked, deferred and recorded as a regulatory asset for accounting purposes. UGI Petition at 7.

In prior cases in which a request for deferral and regulatory asset treatment has been sought, the Commission has stated that the standard a utility must meet when seeking Commission authorization for deferral accounting is whether, based on Commission precedent, the expense item appears to be within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive recovery of past expenses. *See e.g. Petition of United Water Pennsylvania, Inc. For Authorization to Defer, for Accounting Purposes, Certain Unanticipated Expenses Relating to Storm Damage*, Docket No. P-2012-2312950 (Opinion and Order Entered on December 5, 2012).

The type of costs that the Commission has allowed as an exception to the general rule against retroactive recovery of past expenses have been those which are extraordinary, unanticipated, non-recurring and substantial. *Phila. Elec. Co. v. Pa. Public Util. Com.*, 502 A. 2d 722 (Pa. Cmwlth. 1985) ("An exception to this rule in the case of retroactive recovery of unanticipated expenses has been recognized where the expenses are extraordinary and nonrecurring.") In its Petition, UGI cites numerous reasons why the costs associated with pursuing

IIJA funding are unanticipated, extraordinary, non-recurring and substantial. The OCA does not disagree that the utilities' costs in this area may satisfy the exception to the rule against retroactive recovery of past expenses. Should the Commission agree and grant UGI's request for deferral, however, such approval cannot constitute Commission approval of the recovery of these costs in a future rate case. Its approval can only authorize how the expenses are accounted for on the utilities' books pending that rate case. A determination of the proper ratemaking treatment of the expenses can occur only in the context of the rate case.

In past requests for deferral cases, the Commission has recognized the limit of its approval to defer costs by imposing certain conditions on its approval. Typically, these conditions have been that: (1) the authorization for deferred accounting treatment carries with it no assurance of future rate recovery; (2) that the utility make a claim for the deferred expenses at the first opportunity; (3) that the authorization for deferral treatment be limited to actual operations and maintenance expenses and not include capitalized costs; and (4) that any Opinion and Order in the instant matter not limit the ability of a party in a future rate case to contest recovery of any of the costs deferred pursuant to the limited authority by the allowance to defer. *See e.g., Petition of Metropolitan Edison Company for Authorization to Defer, for Regulatory Accounting and Reporting Purposes, Certain Losses from Extraordinary Storm Damage*, Docket No. P-2018-3005957 (Opinion and Order Entered on January 17, 2019).

The OCA respectfully requests that if UGI's Petition for Clarification on the topic of deferral accounting for IIJA expenses is approved, the Commission apply these same conditions to its approval.

Respectfully Submitted,

/s/ David T. Evrard
David T. Evrard

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Dated: April 17, 2023
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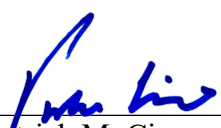
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition Requesting Initiation of a	:	
Proceeding on Federal Fundin	:	Docket No. P-2022-3032929
Opportunities for Utilities under the	:	
Infrastructure Investment and Jobs Act	:	

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate's to the Petition of UGI Utilities, Inc. – Gas and Electric Divisions' for Clarification of the March 31, 2023 Order of the Public Utility Commission, are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: April 17, 2023
*344569

Signature: 
Patrick M. Cicero
Consumer Advocate

Address: Office of Consumer Advocate
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