



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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June 2, 2011

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of UGI Utilities, Inc. - Electric Division for Approval of its Energy
Efficiency and Conservation Plan

Docket No. M-2010-2210316

Dear Secretary Chiavetta:

Enclosed please find an original and nine (9) copies of the Office of Trial Staff's
(OTS) **Initial Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Charles Daniel Shields
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #29363

Enclosure
CDS/edc

cc: Parties of Record
Hon. Susan D. Colwell

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of UGI Utilities, Inc. - :
Electric Division for Approval of its : Docket No. M-2010-2210316
Energy Efficiency and :
Conservation Plan :**

**INITIAL BRIEF
OF THE
OFFICE OF TRIAL STAFF**

Charles Daniel Shields
Senior Prosecutor
PA Attorney I.D. #29363

Johnnie E. Simms
Chief Prosecutor
PA Attorney I.D. #33911

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: June 2, 2011

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I. INTRODUCTION

On November 9, 2010, UGI Utilities, Inc. - Electric Division (“UGI-Electric” or “Company”) elected to file a Petition with the Pennsylvania Public Utility Commission (“Commission”) seeking approval of a proposed Energy Efficiency and Conservation Plan (“EE&C Plan” or “plan”). The Commission Secretarial Letter dated December 23, 2009, sent to the Company [and three other jurisdictional electric distribution companies (“EDCs”) also with fewer than 100,000 customers] provided that the filing of such an EE&C Plan was left to the discretion of the qualifying EDC given that the Act 129 provisions¹ did not mandate the filing of a plan for EDCs with less than 100,000 customers.² The Secretarial Letter provided that, “[E]ach plan will be referred to an Administrative

¹ Act 129, signed into law by the Governor on October 15, 2008, imposed new requirements on EDCs with the stated goal of reducing energy consumption and demand. Under the Act, each EDC with 100,000 or more customers must reduce consumption by 1% by May 31, 2011 and by 3% by May 31, 2013. In addition to the reduced consumption, EDCs must reduce annual system peak demand by a minimum of 4.5% in the 100 hours of highest demand by May 31, 2013.

² The Company provides electric distribution, transmission and default service to approximately 62,000 customers. Petition, p. 2. As referenced in the December 23, 2009, Secretarial Letter, EDCs with fewer than 100,000 customer were exempted from the requirement to file an Act 129 EE&C plan. The Secretarial Letter provides guidelines for the recipient EDCs, Citizens Electric Company, Pike County Light & Power Company, UGI Utilities Inc. - Electric Division and Wellsboro Electric Company, who may elect to file such a plan for review by the Commission.

Law Judge for evidentiary hearings and a recommended decision.”³ Secretarial Letter, p. 1.

The Office of Trial Staff’s (“OTS”) prosecutorial powers and duties were originally specifically prescribed in Section 306(b)(1) of the Public Utility Code, 66 Pa. C.S. § 306(b)(1). Consistent with the Interim Order of the Public Utility Commission (“Commission”) that allowed OTS to continue to assert such authority and perform its enumerated duties,⁴ OTS filed an Answer to the Petition

³ In its Secretarial Letter, the Commission also noted that even though EDCs with fewer than 100,000 customers were exempted from the mandate to file an Act 129 EE&C Plan, and even though the provisions of Act 129 are not directly applicable to voluntary EE&C plans, the Commission made it clear that “certain elements of the Act 129 EE&C program are instructional and applicable to any prudent and cost-effective EE&C program.” *See*: Secretarial Letter, p. 1. The Commission stated that it recognized that “customers served by Small EDCs could also benefit from EE&C measures designed to assist all electric customers in mitigating retail electric rate increases and to help ensure affordable and available electric service.” Secretarial Letter, p. 1. The Commission also stated that “in evaluating each voluntary EE&C plan, the Commission will be looking to the Act 129 program and applying elements of that program where it is prudent and cost effective.” Secretarial Letter, p. 2. OTS Stmt. No. 1, pp. 33-4.

⁴ By Interim Order entered November 12, 2008, at Docket No. M-2008-2071852, the Commission ordered that OTS shall, until further Commission action, continue to perform its duties and functions and that OTS continues to have standing to initiate and participate in Commission proceedings as previously established by the Commission and the Public Utility Code prior to the enactment of Act 129 of 2008.

And specifically, 66 Pa.C.S. § 306(b)(1), provided:

Power and duties. –

- (1) The Office of Trial Staff shall be responsible for and shall assist in the development of, challenge of and representation on the record of all matters in the public interest in all commission proceedings except those involving transportation, safety, eminent domain, siting, service issues having no impact on rates and ability to pay, provided that the Director of Trial Staff may petition the

on November 29, 2010, that preliminarily identified a number of issues that OTS contended needed to be addressed during the proceeding, summarized in the OTS

Answer as follows:

- The Company's proposal to recover lost distribution revenue associated with the reduction in energy consumption as a result of the conservation programs established under the EE&C Plan is an inappropriate guarantee of a certain distribution revenue level and clearly must be stricken as a component of the plan;
- The appropriateness of the Company's proposal that relies upon fuel switching to natural gas requires additional analysis and consideration;
- The Company's proposal contains no peak load reduction targets, a characteristic that requires additional analysis and consideration;
- The Company's proposed level of expenditures to implement the Plan requires further scrutiny and analysis regardless of the fact that the plan cost limits imposed by Act 129 are inapplicable;
- The Company's allocation of costs by customer class must be further investigated to ensure that the class receiving the benefit of a particular plan provision is assessed the related costs to avoid any cost subsidies between and/or among the classes.

OTS Answer to the Petition, pp. 3-4.

commission or may be directed by the commission to intervene to protect the public interest in any proceeding involving transportation, safety, eminent domain, siting, service issues having no impact on rates and ability to pay. To assist in carrying out his powers and duties under this section, the Director of Trial Staff shall supervise the activities of the Office of Trial Staff in all commission proceedings in which he participates. If the Director of Trial Staff is of the opinion that the initiation of a proceeding is necessary to protect the public interest, he shall request that the commission initiate the appropriate proceeding. When he participates in a commission proceeding, it shall be the duty and responsibility of the Director of Trial Staff to prosecute in that proceeding.

The accuracy and validity of these OTS initially identified issues was confirmed by the fact that each was addressed in the OTS testimony and exhibit entered into the record in this fully litigated case.

Per the Commission directive that this proceeding be assigned to the Office of Administrative Law Judge, the intervening parties have been given the opportunity to provide their respective positions and recommendations to the Commission regarding (1) whether the Petition should be granted or denied as UGI-Electric's filed plan is presently structured;⁵ (2) the relative merits, or lack thereof, of each component of the filed plan; and (3) the need for plan modifications deemed necessary and appropriate *in the event* that the Commission elects to incorporate modifications to the submitted EE&C plan rather than either grant or deny the Petition.

OTS has sought to contribute to the scrutiny of the proposed plan throughout the full litigation of this case and has concluded and recommends that the plan as submitted should not be approved for a number of reasons, both individually and collectively, that are presented here in this OTS Initial Brief.

⁵ For simplicity, references in this OTS Initial Brief to the "filed plan" relate to the current structure of the plan, and thereby include any changes or alterations that the Company made to the total plan proposal during the course of this proceeding. An example of such an unilateral Company change is the Company and SEF Joint Stipulation where the Company agreed during the course of this proceeding to include a solar installation rebate for any qualifying residential solar thermal water heating system in addition to the natural and propane gas provisions included as part of its proposed fuel switching program.

As noted, *in the event* the Commission decides to consider modifications to the plan and include them in its final Order, OTS has provided recommendations in its testimony and exhibit regarding such recommended modifications. These OTS recommendations are set forth in this OTS Initial Brief within the headings entitled “IV. Argument, C. Proposed Modifications to Filed Plan, Nos. 1, 2, 3, 4, & 5.” Additionally, the OTS criticisms of the submitted plan as presented in this OTS Initial Brief at “IV. Argument, B. Filed Plan, 1. Position Regarding Approval of Plan as Filed” naturally coincide with and augment the later discussed OTS modifications in the aforementioned “C. Proposed Modifications to Filed Plan” and can be read in conjunction with, and in support of, those OTS proposed recommendations.⁶

II. HISTORY OF THE PROCEEDING

As noted, UGI-Electric’s Petition seeking approval of a proposed EE&C Plan was filed on November 9, 2010.⁷ In addition to the OTS Answer to the

⁶ Thus while the agreed-upon structure and outline of the initial briefs separated the issues into a variety of subheadings, the totality of the OTS arguments on each particular issue may span more than one subheading and should be read together in support of each and every OTS recommendation.

⁷ In its EE&C Plan-Section I: Plan Overview, UGI states that it has constructed a plan that includes a portfolio of energy efficiency, conservation, and consumption reduction measures, programs and education initiatives. *See*: EE&C Plan, p. 1. UGI offers that its portfolio includes nine programs designed to meet the goals and guidelines established in the Commission’s Secretarial Letter, and that all of the programs are voluntary, at the customer’s choice. *See*: EE&C Plan, p. 1. UGI claims that the EE&C programs offer UGI customers a wide range of energy efficiency and conservation measures to decrease electric consumption and, in turn, customer’s electric costs. [Emphasis Added] EE&C Plan, p. 1. OTS Stmt. No. 1, pp. 3-4.

Petition filed on November 29, 2010, Answers were also filed by the Office of Small Business Advocate (“OSBA”) and the Office of Consumer Advocate (“OCA”). Thereafter, on December 1, 2010, the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) filed a Petition to Intervene.

The Prehearing Conference was conducted as scheduled by presiding Administrative Law Judge Susan D. Colwell on January 5, 2011, in the Commonwealth Keystone Building. The OTS Prehearing Memorandum reiterated the list of issues identified in the OTS Answer to the Petition. Subsequent to the Prehearing Conference, the ALJ issued a Scheduling Order on January 12, 2011, that noted the OTS, OCA and OSBA active participation and granted the SEF Petition to Intervene; established a full litigation schedule; provided for the service of documents; addressed the subject of a public input hearing; identified a number of the involved issues and delineated the discovery modifications.

Following the separate distribution of direct, rebuttal, surrebuttal and rejoinder among the parties and to the ALJ pursuant to the established litigation schedule, ALJ Colwell conducted an evidentiary hearing on May 4, 2011, during which the Company and other parties’ prepared testimony and exhibits were offered and admitted into the record and cross examination of two of the Company

witnesses was conducted by OTS Senior Prosecutor Shields and cross examination of one of the Company witnesses was conducted by OCA counsel.⁸

The three separately distributed OTS testimonies, Direct, Rebuttal and Surrebuttal and an OTS Exhibit admitted into the record at that hearing were produced and sponsored by OTS Witness Scott Granger, who is a full-time OTS expert witness holding the Commission title of Executive Policy Analyst. His Direct Testimony was offered and admitted into the record as OTS Statement No. 1 and his accompanying separately bound Exhibit was admitted as OTS Exhibit No. 1 (consisting of Schedules 1-4). His Rebuttal Testimony was admitted as OTS Statement No. 1-R and his Surrebuttal Testimony was admitted as OTS Statement No.1-SR. Said testimonies present the OTS position recommending denial of UGI-Electric's Petition for a number of reasons - in particular the inclusion of a insisted-upon revenues recovery scheme and a fatally flawed fuel switching program.

Again, *in the event* that the Commission's deliberations include consideration of authorizing an EE&C Plan with the inclusion of modifications deemed necessary and appropriate,⁹ the OTS and the other parties' testimonies

⁸ With all necessary business completed at the evidentiary hearing of May 4, 2011, ALJ Colwell cancelled the second evidentiary hearing scheduled for the following day.

⁹ During its review of the instant record, the Commission may decide to consider the other parties' positions seeking modifications to the Plan in recognition that reductions in electricity consumption levels and peak demand requirements within UGI-Electric's service territory are worthwhile energy conservation and public

presented their respective positions advocating such modifications to the Company's presently proposed plan.

As agreed among the parties and authorized by ALJ Colwell, the table of contents and the body of this OTS Initial Brief include common headings and subheadings. Heading and subheading issues addressed in this OTS Initial Brief are shown in bold type in the table of contents and body of this brief and those not specifically addressed by OTS in this proceeding [representing other parties' proposed modifications to the plan as filed] are shown in regular type. Also of note, headings and subheading in the body of this brief regarding issues not addressed by OTS are followed by a brief notation, typically stating "*OTS did not present any specific recommendation regarding this subject.*" This OTS Initial Brief also includes the parties' agreed-upon attachments. Attachment A is the OTS "Proposed Findings of Fact" and Attachment B is the OTS "Proposed Conclusions of Law."

OTS now submits this Initial Brief to ALJ Colwell and the Commission recommending denial of the Petition seeking authority to institute an EE&C Plan for customers in its service territory as presently constructed by the Company. We assert that OTS presents valid and sound reasons for the ALJ and the Commission to adopt this OTS recommendation to deny the Petition. In support of the OTS recommendation, this OTS Initial Brief references sections of the OTS testimony

policy goals - if such a EE&C Plan is properly designed and operated in a manner that serves the public interest, and particularly the best interests of UGI-Electric's customers.

and exhibit, the corresponding portions of the transcript of the evidentiary hearing, the Company's currently structured plan and other documents admitted into the instant record. Yet again, *in the event* the Commission is inclined to authorize a plan with a number of the modifications proposed by non-Company parties to this proceeding, we submit that the OTS proposed modifications to the plan set forth in this OTS Initial Brief are similarly supported by such record references and warrant adoption and inclusion by the Commission. In those circumstances, we submit that adoption of the OTS recommendations are vital and necessary to ensure that some viable plan can be constructed from the fundamentally flawed framework of the Company's present proposal.

III. SUMMARY OF ARGUMENT

Based upon our scrutiny of the instant EE&C Plan devised by UGI-Electric and our responsibility to represent the public interest, the Office of Trial Staff recommends that the Commission deny the instant Petition for the reasons stated herein. The Company has failed to meet its burden of proof to demonstrate that implementation of the plan is cost effective or that such implementation is in the public interest, a criteria that includes the best interest of customers.¹⁰

¹⁰ In conjunction with the Commission issuance of its Secretarial Letter, Chairman Robert Powelson issued a statement, dated December 17, 2009, entered into the record in this proceeding as OTS Exhibit No. 1, Sch. 2, wherein he stated "I wish to make it clear that, by today's action, we are in no way mandating that the smaller EDCs file EE&C plans of the scope mandated by Act 129, or even file EE&C plans at all." *See*: Powelson Statement, p. 1. Moreover, "I believe these [small] EDCs should only file plans if, after careful scrutiny, it is determined that

OTS considers the plan as filed to be fatally flawed, inter alia, due to (1) the Company's insistence upon the inclusion of a revenue recovery mechanism scheme [either through a surcharge or regulatory asset treatment] to guarantee a certain level of their distribution service revenues; (2) the inclusion of a fuel switching plan that is not fuel neutral, overly generous and unduly beneficial to affiliated entities; (3) the failure to include provisions designed specifically to achieve peak load reductions; and (4) the high level of proposed plan expenditures. Again, *in the event* that the Commission decides during its deliberations to incorporate one or more modifications to the filed plan and produce a final Order for consideration of Company, the OTS testimony and exhibit entered into the record in this proceeding has identified a number of modifications to the Company's proposal that should be addressed and resolved by the Commission in the manner recommended by OTS. The issues giving rise to the OTS-recommended modifications set forth in this OTS Initial Brief can be summarized as follows:

- The Company's proposal to recover lost distribution revenue associated with the reduction in energy consumption as a result of the implementation of UGI's EE&C plan through the use of the proposed CD Rider.¹¹

doing so is in the best interest of their customers." [Emphasis Added] Powelson Statement, p. 1.

¹¹ This issue is augmented by the Company's alternative proposal for regulatory asset treatment, first introduced in the rebuttal testimony of Company Witness McAllister to seek to recover the lost revenues in that manner rather than through a proposed CD Rider identified in the filing. UGI-Electric Stmt. No. 3R, pp. 7-10.

- The appropriateness of the Company's proposal that relies upon fuel switching to natural gas requires additional analysis and consideration.
- The lack of EE&C programs in the UGI's Plan designed specifically to achieve peak load reductions.
- The cost-effectiveness and prudence of UGI's proposed total expenditures to implement and manage the Plan.
- The Company's allocation of costs by customer classes including the avoidance of any cost subsidies between and/or among the classes.

OTS Stmt. No. 1, pp. 12-13.

OTS respectfully points out that, given that this is the first submitted EE&C plan by a smaller EDC not mandated to do so by Act 129, it is imperative that all involved ensure that the analysis of the plan is both thorough and complete, and that the rationale for the outcome of this proceeding be both clear and definitive. The OTS participation in this proceeding has been directed towards achieving those noteworthy goals.¹²

IV. ARGUMENT

A. Burden of Proof/Applicable Legal Standard

Section 332(a) of the Public Utility Code, provides that the party seeking a rule or order has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a).

Specifically, Section 332(a), 66 Pa. C.S. § 332(a) provides:

332. Procedures in general.

¹² As noted, in addition to UGI- Electric, the other EDC recipients of the Commission's Secretarial Letter were Citizens Electric Company, Pike County Light & Power Company, Division and Wellsboro Electric Company, who may or may not subsequently elect to file such a plan for review by the Commission based upon the outcome of this proceeding.

(a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

Moreover, any facts utilized to support this burden must be established by a preponderance of the evidence; that is, evidence presented by the proponent must be more convincing, by even the smallest degree, than that proposed by any opponent. 66 Pa. C.S. § 332(a); *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Necessarily, this requires that a party seeking that the Commission grant its Petition has the burden of going forward with the evidence to prove its case - and, the presented evidence must prove the material facts regarding which the Commission must make findings in order to support the conclusion desired by the proponent. *Re West Penn Power Company*, 54 Pa. PUC 319; 1980 Pa. PUC LEXIS 49 (May 29, 1980). It is also well established that the ultimate decision of the Commission must be supported by reliable, probative and substantial and legally creditable evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *Pocono Water Company v. Pennsylvania Public Utility Commission*, 630 A.2d 971 (Pa. Cmwlth. 1993).

Consequently, as the party seeking Commission approval for its proposed EE&C Plan, UGI-Electric bears the burden to affirmatively prove that plan is, by a preponderance of the evidence, in the public interest, a standard that includes the specific showing that it is necessary or proper for the service, accommodation,

convenience or safety of the public and that they have met the applicable Commission rules, regulations, policy statements, directives and guidelines.

OTS contends that a review of the record will demonstrate that the Company has failed to meet its burden and the Commission may justifiably deny the instant Petition and accompanying plan as presently constructed.

B. Filed Plan

1. Position Regarding Approval of Plan as Filed

For the reasons stated herein and as presented in the OTS testimony and exhibit, OTS recommends that the Commission deny UGI-Electric's Petition and thereby reject the plan as filed (and supported by the Company throughout this proceeding) given the Company's failure to demonstrate that it is either cost effective or in the public interest - and specifically here the best interest of customers.

Initially, it is important to emphasize that the OTS-proposed modifications to the filed plan can serve as evidence of the litany of deficiencies that exist in the Company's presently proposed EE&C plan and serve, by their very existence, to support the primary OTS position that the plan should be rejected. This strict "yea or nay" OTS position is eminently reasonable and appropriate given the Company's stated position in this proceeding that it can ultimately decide - following the entrance of the Commission's Order at this docket - to withdraw its voluntary plan and take no related action(s) to enhance conservation measures among its customers. Transcript, pp. 96-98.

Given the currently flawed state of the submitted plan, OTS would contend that UGI-Electric's customers would be financially better off with NO PLAN rather than being shackled with a plan that lacks ALL the OTS modifications to render it cost effective and in the customers' best interests. Among the most troubling components of the plan as filed is an improvident and simply dangerous proposal to have the Commission authorize the inclusion of a lost revenue recovery mechanism [either through a surcharge or through regulatory asset treatment] as part of authorized EE&C Plan that would guarantee a certain level of all distribution service revenues. OTS opposes the inclusion of such a provision within the plan despite the Company' repeated contention that some sort of revenue recovery mechanism is "essential" to ensuring shareholders' interest in the voluntary implementation of the plan.

OTS would counter the Company's contentions by recognizing that there is simply no room for compromise on this important issue as the establishment of such a revenue level guarantee mechanism for any reason is anathema to well established and fundamental ratemaking principles. Rather than the *implementation* of such a guaranteed revenue scheme, the appropriate determination of an appropriate level of base rate revenues requires a thorough review and analysis of all factors that go into establishing just and reasonable rates - a scrutiny that can only occur during a base rate proceeding. And of particular significance to the present issue, we emphasize that the outcome of even a base rate proceeding is to determine a level of rates designed to give the subject utility

the opportunity to receive the identified revenue level - not a guarantee of that level.

Moreover, OTS submits that approval of a revenue recovery mechanism in this proceeding would establish a dangerous precedent that would very likely open the floodgates to a myriad of filings from other utilities seeking [by whatever method and for whatever reason] to be equally assured of receiving a guaranteed annual level of revenues collected from their customers. As such, the Commission must recognize that the massive downside of approving such a revenue guarantee scheme simply to ensure the implementation of this voluntary EE&C Plan by a smaller EDC far outweighs any concerns that the UGI-Electric will follow up on its thinly veiled threat to “take its ball and go home” if a revenue recovery mechanism is not included as part of the approved plan.

As further discussed later in this OTS Initial Brief, the inclusion of a lost revenue recovery mechanism whereby customers are charged an additional amount beyond the recovery of the costs of the programs can and should be considered when determining whether the Company’s submitted plan is “cost effective.” This requires more than a simple comparison of the actual plan administrative costs compared to the electricity demand reductions and must recognize the obvious total “out of pocket” results to customers. The plan as filed with a revenue recovery scheme attached means that, not only will customers be required to pay all charges actually incurred to implement and operate the plan, there will be an ADDITIONAL charge (which incidentally is not found in any of

the mandatory Act 129 plans approved by the Commission) that will be borne by customers. Surely, that additional charge affecting customer's rates is undeniably also important and must be taken into consideration when the issue of cost effectiveness -and the entire nature of any and all "costs" is addressed and resolved by the Commission. In essence, the Company's inclusion of a revenue recovery mechanism ensures that customers as a whole will likely not experience overall savings since the revenues will simply be recouped in a different manner (with the exception of those customer switching to gas service due to receiving subsidized gas appliances also financed through the plan).

Another fatal flaw of the Company's EE&C Plan is the proposed inclusion of a fuel switching program that is not only not "fuel neutral" but would serve to provide hefty financial incentives to customers to switch from electric appliances to - interestingly - natural gas supplied by a UGI affiliate or - also, interestingly - propane gas provided by a company owned by UGI. Of note, while OTS lauds SEF for having UGI-Electric agree through a Joint Stipulation to include a solar installation rebate as part of the fuel switching program,¹³ such an addition does not alter the fundamental OTS position on the issue of the lack of "fuel neutrality."

As stated by OTS Witness Granger in his Direct Testimony, "As UGI's fuel switching plans are currently proposed, a skeptic or cynic could argue that the

¹³ We note the amendment to the Plan to include a solar installation rebate for any qualifying residential solar thermal water heating system by virtue of the Joint Stipulation entered into by UGI-Electric and the Sustainable Energy Fund of Central Eastern Pennsylvania and dated May 4, 2011.

whole purpose of the incentivized fuel switching programs is to switch UGI-Electric customers over to UGI-Gas customers, which would have a net result of the parent corporation UGI Utilities retaining the customers, the sales, and the profits. Furthermore, this would be occurring at the same time that UGI-Electric would be using the proposed CD Rider or regulatory asset treatment to recoup the lost revenues resulting from UGI customers switching from electric to natural gas. The net effect would be a triple dipping by UGI Utilities.” OTS Stmt. No. 1, p. 19. OTS Stmt. No. 1-SR, pp. 9, 11-12. And, as also pointed out by Mr. Granger, UGI-Electric will receive a reimbursement for all incentives paid to customers that switch to natural gas appliances through the implementation of the proposed EEC Rider. OTS Stmt. No. 1-SR, p. 11.

On this subject, OTS Witness Granger explained that during the initial implementation of Act 129, questions were raised with regard to fuel switching programs and their place within Act 129 EE&C Plans. OTS Stmt. No. 1, pp. 14-16. He noted that the Fuel Switching Work Group (“FSWG”) was initiated by the Commission in June 2009 to identify, research, and address the Act 129 issues related to fuel switching. The FSWG presented its Staff Report (“FSWG Staff Report”)¹⁴ to the Commission on April 30, 2010 and the Commission issued a Secretarial Letter on May 21, 2010¹⁵ (“FSWG Secretarial Letter”) adopting the recommendations contained in the FSWG Staff Report. Even though the FSWG

¹⁴ Provided in this proceeding as OTS Exhibit No.1, Sch. 3.

¹⁵ Provided in this proceeding as OTS Exhibit No.1, Sch. 4.

could not reach a true consensus on any of the issues raised, the FSWG ultimately recommended that any fuel switching program that passes a cost-effectiveness test and assists the EDC in meeting its consumption and demand reduction targets must also be “fuel neutral” before the Commission will consider approving its implementation. FSWG Staff Report, pp. 23-24. The FSWG noted that fuel switching programs should include natural gas, propane, fuel oil, solar, and even other fuels such as biomass and solar thermal; stating that this methodology would provide ratepayers with an opportunity to evaluate their specific situation and determine which energy source best meets their needs while at the same time reducing electricity consumption and demand. FSWG Staff Report, pp. 22-23. Additionally, the Commission recommended changes to the Total Resource Cost Test needed to appropriately analyze the costs and benefits of energy efficiency measures that involve switching from electricity to another fuel source. FSWG Secretarial Letter, p. 3. As characterized by OTS Witness Granger, the overriding concern of the Commission and the stakeholders was the danger that EE&C Plan fuel switching programs would be used to steer customers away from electricity and toward a single alternative fuel source at the exclusion of all other viable alternative fuel sources.¹⁶ OTS Stmt. No. 1, pp. 15-16.

¹⁶ This contention by OTS Witness Granger was not the subject of any cross examination as no cross examination of Mr. Granger was conducted at the sole evidentiary hearing on May 4, 2011.

2. Filed Plan's Adherence to Commission's December 23, 2009, Secretarial Letter Guidelines

The Commission's December 23, 2009, Secretarial Letter regarding Voluntary Energy Efficiency and Conservation Programs for EDCs with fewer than 100,000 customers has been providing in this proceeding as OTS Exhibit No. 1, Schedule 1 for ease of reference. As to that Letter, the Commission noted the smaller EDCs were exempted from the mandate to file an Act 129 EE&C Plan, and acknowledged that the express provisions of Act 129 are not directly applicable to voluntary EE&C plans. However, as stated by OTS Witness Granger, the Commission made it equally clear that "certain elements of the Act 129 EE&C program are instructional and applicable to any prudent and cost-effective EE&C program." OTS Stmt. No. 1, pp. 3-4. Secretarial Letter, p. 1. The Commission stated that it recognized that "customers served by Small EDCs could also benefit from EE&C measures designed to assist all electric customers in mitigating retail electric rate increases and to help ensure affordable and available electric service." OTS Stmt. No. 1, pp. 3-4. The Commission also stated that "in evaluating each voluntary EE&C plan, the Commission will be looking to the Act 129 program and applying elements of that program where it is prudent and cost effective." OTS Stmt. No. 1, pp. 3-4.

This OTS Initial Brief points out numerous elements of the proposed plan that OTS contends fundamentally fail to adhere to the guidelines set out by the Commission for the construction of such smaller EDC EE&C plans.

3. Filed Plan's Cost Effectiveness

As noted, the Commission stressed cost effectiveness as a critical factor to be considered by the small EDC's when designing, implementing and administering a proposed EE&C plan. As referenced by OTS Witness Granger, the Commission suggests a number of times that if a small EDC cannot design, implement and administer a cost effective EE&C plan that will assist all electric customers in mitigating retail electric rate increases and ensure affordable electric service, then that small EDC should reconsider the prudence of implementing its EE&C program in the first place. Secretarial Letter, pp. 1-3. OTS Stmt. No. 1, pp. 6-7. The Commission's policy in this regard is further evidenced in the Letter, which provides, "furthermore, as the cost-effectiveness and verification of energy savings is prudent and essential for any such [EE&C] program ..."

[Emphasis Added] Secretarial Letter, p. 1. The Secretarial Letter also states: "[the Commission] recognize[s] that the Act 129 program contains a complexity and comprehensiveness that may not be appropriate for Small EDCs, due to the costs of such programs that must be supported by a smaller customer base." [Emphasis Added] Secretarial Letter, p. 2. OTS Stmt. No. 1, p. 7. As stressed by OTS Witness Granger, these cited statements indicate that the Commission may be cognizant that it may not be prudent or indeed cost-effective for some of the small EDCs to design, implement and administer EE&C programs. OTS Stmt. No. 1, p. 7. This is precisely the OTS's point - the presently proposed Company EE&C plan is inappropriately shackled by the Company with a guaranteed revenue

recovery mechanism and a dodgy fuel switching program [among other flaws] that renders the EE&C plan both imprudent and prohibitively costly.

As also pointed out in the OTS Direct Testimony, Chairman Robert Powelson issued a Statement, dated December 17, 2009,¹⁷ (“Powelson Statement”) that provided, inter alia, “I wish to make it clear that, by today’s action, we are in no way mandating that the smaller EDCs file EE&C plans of the scope mandated by Act 129, or even file EE&C plans at all.” Powelson Statement, p. 1. Moreover, “I believe these [small] EDCs should only file plans if, after careful scrutiny, it is determined that doing so is in the best interest of their customers.” [Emphasis Added] OTS Ex. No. 1, Sch. 1 “Powelson Statement.”

As previously referenced in this OTS Initial Brief, UGI-Electric’s insistence upon the inclusion of a revenue recovery mechanism must assuredly be taken into account by the Commission when reviewing whether the Company has met its burden of proving that the plan as proposed is “cost effective.” We note that the Company seeks to address the issue in its Petition, where it states, “section 3 of the EE&C plan describes the cost-effectiveness of the plan based on the TRC test criteria.” Petition, p. 10. At section 3 of the plan, UGI states, “[i]n accordance with the Commission’s Secretarial Letter, UGI Electric designed its Plan to offer programs that meet the TRC test. The Plan as a whole, and all of the individual programs in the Plan, are cost-effective according to the TRC

¹⁷ Provided in this proceeding as OTS Exhibit No. 1, Sch. 2.

guidelines established by the Commission.” Plan, Sec. 3, p. 70. OTS Stmt. No. 1, p. 8.

In his Direct Testimony, OTS Witness Granger references this Company insistence upon the inclusion of a revenue recovery mechanism that, OTS asserts must be considered as part of the determination of “cost effectiveness,” citing to the Petition at page 12, paragraph 26, that asserts:

“Without approval of the CD Rider, UGI Electric would have no incentive to file this voluntary Plan because it would put the Company in the position of foreseeable revenue deficiencies without a recovery mechanism, thereby also unduly influencing the Company’s decision to file a base rate case much sooner than it otherwise would.”

Petition, p. 12.

OTS Witness Granger also notes that Company Witness McAllister states in his Direct Testimony that, “foreseeable revenue deficiencies without an adjustable rate mechanism present a significant hurdle for a voluntary filer to move forward with conservation efforts.” UGI-Electric Stmt. No. 3, p. 3, lines 15-17. Mr. McAllister also states: “without recovery of lost revenues through an adjustable rate mechanism, the Company will likely be forced to file a base rate case much sooner than it otherwise would.”¹⁸ UGI-Electric Stmt. No. 3, p. 3, line 23 and p. 4, lines 1-2. OTS Stmt. No. 1, p. 9.

¹⁸ OTS Witness Granger also points to another such Company assertion to the effect that the Commission’s failure to provide a revenue recover mechanism would accelerate the filing of a base rate case to the financial detriment of customers - where he references Mr. McAllister’s statement, “Furthermore, UGI Electric is proposing to recover lost revenues through the CD Rider because the administrative costs of putting on a base rate case ... are quite significant and

Thus, OTS Witness Granger quite rightly concludes that an EE&C plan that bootstrapped a revenue recovery scheme “would not and could not be cost-effective and certainly that UGI’s EE&C Plan, as proposed, would not and could not be in the best interests of UGI’s customers.”¹⁹ OTS Stmt. No. 1, p. 9.

4. Filed Plan’s Voluntary Nature/Company’s Ability to Withdraw Plan If Commission Removes Revenue Recovery Mechanism

The Company’s position regarding its perceived ability to withdraw its submitted EE&C Plan if the Commission removed its proposed revenue recovery mechanism [or for that matter, made any changes deemed unacceptable by UGI-

have a disproportionate impact on the customer base of smaller EDCs. ... UGI Electric’s customers would be materially burdened with these additional administrative costs [related to putting on a base rate case] (on top of the administrative costs relating to developing and implementing the proposed EE&C Plan).” UGI-Electric Stmt. No. 3, lines 19-23. OTS Stmt. No. 1, p. 9. To the extent that the Company seeks to advance and belabor that contention in its Initial Brief, OTS will respond accordingly in the OTS Response Brief.

¹⁹ Thus, to paraphrase OTS Witness Granger, the Company argues that if they are not allowed to recover its lost revenues, then they will be burdened by the additional administrative costs of administering its proposed EE&C plan to the extent that they will be forced to file a base rate case much sooner than they it normally would have. OTS Stmt. No. 1, p. 10. And following the Company’s argument, the premature filing of the base rate case will then cause UGI-Electric to incur the additional administrative costs of pursuing the base rate case. All of which, in turn, will put an increased financial burden on customers through higher rates by way of the CD Rider and/or the base rate case. Again paraphrasing Mr. Granger, he concludes that, in the end, UGI-Electric’s customers will ultimately see higher rates stemming from the CD Rider and/or the base rate case as a result of UGI’s original wishes to implement a voluntary EE&C Plan to reduce consumption, presumably in part to decrease customer’s electric costs. OTS Stmt. No. 1, p. 10. While noting that this analysis and discussion preceded the Company’s later submitted proposal for regulatory asset treatment as an alternative revenue recovery scheme, OTS contends that, whatever the revenue recovery mechanism, the observations and conclusions set forth by OTS Witness Granger regarding the failure of the Company to demonstrate the plan’s cost effectiveness remain valid as stated.

Electric] was made clear during cross examination of Company Witness

McAllister by OTS Senior Prosecutor Shields, as follows:

Q. And also looking at those lines one through five, given the representations there, there is also a possibility that we could go through this entire proceeding, present testimony, present cross-examined witness, write briefs and reply briefs, have the ALJ write and issue a recommended decision, file exceptions and reply exceptions, have the Commission issue a final order, and if the company didn't like that final order, it's your position that UGI Electric could at that point in time withdraw the plan entirely; is that correct?

A. That is correct.

Transcript, pp. 96-97.

C. Proposed Modifications to Filed Plan

1. Elimination of Any Revenue Recovery Mechanism

In the event the Commission entertains modifications to UGI-Electric's EE&C plan, OTS and a number of other parties to this proceeding have recommended rejection of the proposal to include a revenue recovery mechanism as part of the Company's EE&C Plan. As stated earlier in this OTS Initial Brief in the heading "Position Regarding Approval of Plan as Filed," the establishment of such a revenue level guarantee mechanism for any reason is completely contrary to well established and fundamental ratemaking principles as it fails to allow for the necessary thorough review and analysis that can only occur during a base rate proceeding. And again, even a base rate proceeding is to determine a level of rates designed to give the subject utility the opportunity to receive the identified revenue level rather than providing a guarantee of that level.

Although the Act 129 provisions are not directly applicable here, such guaranteed recovery of any distribution revenues that the Company may attribute to customers' conservation measures is indeed contrary to the provisions of Act 129, as well as the Commission's directives as set forth in its January 16, 2009, Implementation Order at Docket No. M-2008-2069887, page 36. Both Act 129 and the Implementation Order make it abundantly clear to the affected utilities that lost/decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.²⁰ Again, while Act 129 is not directly applicable to UGI-Electric's proposed plan as controlling as a matter of law, the fundamental concept that an EDC may only recover any lost distribution revenues due to reduced energy consumption in a Section 1308 base rate case filing remains valid for this or any other jurisdictional EDC - regardless of size.

OTS Witness Granger, whose Appendix A "Professional and Educational Experience" attached to his Direct Testimony reflects that he *continues to be* a licensed attorney here in the Commonwealth, addresses this issue head on in his Direct Testimony, as follows:

Q. IS UGI'S PROPOSED CD RIDER AGAINST THE LEGISLATIVE INTENT OF ACT 129 AND PUBLIC POLICY REGARDING RECOVERY OF LOST REVENUE RESULTING FROM THE IMPLEMENTATION OF EE&C PROGRAMS?

²⁰ This same reasoning is similarly applicable to UGI-Electric's alternative regulatory asset scheme.

A. Yes. The Commission clearly states: “[t]he Commission will permit the recovery of all reasonable and prudent costs incurred in implementing and managing a voluntary EE&C plan through a reconcilable adjustment clause under section 1307 of the Public Utility Code, 66 Pa. C.S. §1307.” See, Secretarial Letter at page 2. It can reasonably be inferred, by non-inclusion in the above quoted statement, that the Commission’s intent is to NOT allow the recovery of lost revenue through the use of the reconcilable adjustment clause as proposed by UGI. Furthermore, UGI’s request to do so by way of its proposed CD Rider is contrary to the legislative intent of Act 129, contrary to the public policy implied in the Commission’s Implementation Order and the Commission’s past treatment of Large EDCs and contrary to the obvious intent of the plain language of the Secretarial Letter. If the Commission were to allow UGI to use its proposed CD Rider in this manner it would cause a rift between the Commission, Large EDCs, the customers of Small EDCs and the public in general.

OTS Stmt. No. 1, pp. 13-14.

The above statements of OTS Witness Granger are equally relevant to the Company’s alternative proposal for regulatory asset treatment, first introduced in the rebuttal testimony of Company Witness McAllister, in order to recover revenues in that manner rather than through the proposed CD Rider identified in the filing. UGI-Electric Stmt. No. 3R, pp. 7-10.

As such, OTS recommends that the Commission modify the Company’s proposed plan to eliminate any revenue recover mechanism, whether through an additional rider or through the establishment of a regulatory asset.

2. Elimination or Modification to Fuel Switching Program

In the event the Commission entertains modifications to UGI-Electric’s EE&C plan, OTS recommends the elimination of the fuel switching program because (1) it is not “fuel neutral,” (2) the level of incentives paid to customers that switch to natural gas appliances is overly generous to the financial detriment

of other customers; and (3) UGI-Electric's parent corporation UGI Utilities, Inc. coincidentally receives a triple dipping benefit as a result of such programs. OTS Stmt. No. 1, pp. 14-20. OTS Stmt. No. 1-R, pp. 3-5. OTS Stmt. No. 1-SR, pp. 10-12.

The Company's EE&C plan proposes two fuel switching programs: (1) Home Energy Efficiency Incentives – Fuel Switching (Residential Sector/Low Income Customers), and (2) Commercial and Industrial Efficiency Incentives – Combined Heat and Power.²¹ UGI EE&C Plan, pp. 57-69. OTS Stmt. No. 1, p. 16. The proposed Home Energy Efficiency Incentives program promotes fuel switching for water heating, space heating and clothes drying.²² The EE&C plan states “natural gas appliances such as furnaces, water heaters, and clothes dryers use less energy and emit less carbon than electric appliance equivalents on a total fuel cycle basis. In addition, natural gas appliances have an annual operating cost advantage over their electric counterparts.” [Emphasis Added] EE&C Plan, p. 57,

²¹ During cross examination by OTS Senior Prosecutor Shields, Company Witness Raab acknowledged that the broader fuel switching alternatives available to commercial customers was not available to residential customers because of the Company's claimed inability to identify any other viable alternatives that customers in the residential sector may want to implement for most of the fuel switching end uses that they proposed. Tr. pp. 42-44.

²² The Company projects electric energy consumption savings for each of the appliances listed in the Home Energy Efficiency Incentives program of (1) 2,681 MWh per year for a three year total of 8,044 MWh for water heater fuel switching; (2) 108 MWh per year for a three year total of 323 MWh for clothes dryer fuel switching; and (3) 323 MWh per year for a three year total of 968 MWh for space heating fuel switching. EE&C Plan, pp. 62-63. Combined, the three appliance programs listed above equate to a three year grand total of 9,335 MWh. UGI EE&C Plan, pp. 57-69. OTS Stmt. No. 1, p. 17.

OTS Stmt No. 1, p. 16. The program offers incentives of: (1) \$900 for all natural gas water heaters; (2) \$830 for all natural gas clothes dryers, and (3) \$4,850 for all natural gas furnaces. [Emphasis Added] EE&C Plan, p. 60, OTS Stmt No. 1, p. 16.

As opined by OTS Witness Granger, these residential sector incentives are excessive and go beyond the “incentive” intended to the point of where the “incentive” may be greater than the retail price of the new natural gas appliance. OTS Stmt. No. 1, p. 16.

The Company’s proposed Commercial and Industrial Efficiency Incentives program promotes the use of what they refer to as Combined Heat and Power (“CHP”) for electricity generation.²³ UGI-Electric’s Plan states that it “will encourage energy efficiency on a total fuel cycle basis by promoting the use of natural gas distributed electricity generation where the direct end use of natural gas is more efficient and cost-effective under the Total Resource Cost test.” EE&C Plan, p. 64. The CHP program offers incentives of \$1,500 per kW of CHP system and up to \$90,000 total per customer. EE&C Plan, p. 65. OTS Stmt. No. 1, p. 17. Commenting upon the aggregate projected affects of the fuel switching programs, OTS Witness Granger observes that the fuel switching programs

²³ The Company projects electric energy consumption savings for the CHP program to be 406 MWh in year one, 812 MWh in year two, and, 812 MWh in year three; for a three year total of 2,030 MWh. EE&C Plan, p. 69. OTS Stmt. No. 1, p. 17.

represent some 27.8% of UGI-Electric's total estimated electric energy consumption savings from its entire EE&C plan.²⁴ OTS Stmt. No. 1, p. 18.

On the important issue of whether the proposed fuel switching programs are "fuel neutral," OTS Witness Granger concludes that they are not, observing that the programs appear to steer UGI-Electric customers toward only natural gas as an alternative fuel source. OTS Stmt. No. 1, p. 18. He notes in particular that in all, the proposed fuel switching programs encompass thirteen pages within UGI's EE&C plan and that the word "propane" appears only once, and the words fuel oil, solar, biomass, and solar thermal do not appear at all. EE&C Plan, pp. 57-69. OTS Stmt. No. 1, p. 18.

OTS Witness Granger further emphasizes that the fuel switching programs proposed by UGI-Electric, whether intentional or not, result in its parent corporation UGI Utilities, Inc. receiving a triple dipping financial benefit. He explains that the triple dips result given that: (1) UGI will receive a reimbursement for all incentives paid to customers that switch to natural gas appliances through the implementation of the proposed EEC Rider; (2) UGI-Gas, a division of UGI Utilities, will acquire new customers as a result of the customers incentivized purchases of natural gas appliances; and (3) UGI-Electric will receive reimbursement for the lost revenues resulting from the implementation of the fuel

²⁴ The three year total combined electric energy consumption savings for all of the proposed fuel switching programs identified above is 11,365 MWh. EE&C Plan, page 4. The total estimate three year electric energy efficiency consumption savings for UGI's entire proposed EE&C plan is 40,868 MWh. OTS Stmt. No. 1, p. 18.

switching programs, and the loss of the UGI-Electric customers to UGI-Gas, through the use of the proposed CD Rider.

In his Rebuttal Testimony, OTS Witness Granger stated his agreement with Sustainable Energy Fund Witness John M. Costlow conclusion at page 5 of his direct testimony that UGI-Electric's fuel switching program, as presently proposed, is not fuel neutral.²⁵ OTS Stmt. No. 1-R, pp. 2-3. OTS Stmt. No. 1, pp. 18-19.

As such, OTS recommends that the Commission modify the Company's submitted plan to remove the fatally flawed fuel switching program.

3. Inclusion of Peak Load Reduction Targets

This proposed modification to the Company's filed plan to provide for the inclusion of programs designed to establish and reach peak load demand targets is recommended by OTS in this proceeding. In his Direct Testimony, OTS Witness

²⁵ After providing his definition of a fuel switching program and the concept of "fuel neutrality", SEF Statement No. 1, pp. 4-5, Mr. Costlow expresses his opinion that UGI-Electric's proposed fuel switching program is not fuel neutral since it is only open to propane and natural gas. SEF Statement No. 1, p. 5. Mr. Costlow then recommends that UGI-Electric open its fuel switching program to the alternative energy sources listed in Tier I of the Commonwealth's alternative energy portfolio standards.²⁵ In particular, Mr. Costlow recommends that UGI-Electric establish a rebate program whereby the consumer chooses the energy source that will be employed for such fuel switching.²⁵ And, more specifically, Mr. Costlow stresses the inclusion of solar water heaters employing solar thermal systems as his Tier I alternative energy source of choice. SEF Statement No. 1, pp. 6-7. Mr. Costlow further states that solar thermal systems can out-perform propane water heating systems from an economic standpoint. He also emphasizes that the choice of energy source and technology should be left to ratepayers who are paying for the program, not UGI-Electric who is managing the program and has competing corporate profit motives for focusing on natural gas and propane as the only fuel switching choices. SEF Statement No. 1, pp. 5-6. OTS Stmt. No. 1-R, pp. 2-3.

Granger points out that any peak load reduction to an electric power grid is an important consideration and therefore recommends the addition of specific programs in the Company's EE&C plan designed to achieve peak load reductions that will effectuate a reduction in the greater electric power grid peak load demand for the 100 hours of highest demand. OTS Stmt No. 1, pp. 20-22. In support of this recommendation, OTS Witness Granger put forth his considered opinions that peak load management and peak load reduction are essential parts of the management of the larger electric power grid and should be an integral part of any small EDC's voluntary EE&C plan.²⁶ OTS Stmt. No. 1, p. 20.

Granted, while the EE&C plan of a small EDC will be seen to impact only the customers within its service territory, by virtue of each small EDC's service territory existing within the larger electric power grid, any peak demand reduction achieved by any of the small EDC's, no matter how small, will have a beneficial demand reduction impact on the larger electric power grid. Therefore, if the Commission decides that pursuing consumption reduction and peak demand reductions within UGI's electric service territory are worthwhile conservation and public policy goals; and, it is in the best interests of UGI Electric's customers,

²⁶ Of note, the larger EDCs subject to the requirements of Act 129, must reduce consumption by 1% by May 31, 2011 and by 3% by May 31, 2013. In addition to the reduced consumption, those EDCs must reduce annual system peak demand by a minimum of 4.5% in the 100 hours of highest demand by May 31, 2013.

then, more clearly defined and targeted peak load reduction programs should be part of the EE&C plan.²⁷ OTS Stmt No. 1, pp. 20-22.

As such, OTS recommends that the Commission modify the Company's proposed EE&C Plan to provide for the addition of specific programs to reduce peak load demand for the 100 hours of highest electricity demand.

4. Reduction in Total Plan Expenditure Levels

This proposed modification to the Company's filed plan to provide for a reduction in the amount of overall plan expenses due to the smaller size of UGI-Electric is recommended by OTS in this proceeding. As noted by OTS Witness Granger, Act 129 allows EDCs having at least 100,000 customers to recover all prudent and reasonable costs relating to the implementation and management of its EE&C plan, but limits such costs to an amount not to exceed two percent (2%) of the EDC's total annual revenue as of December 31, 2006. OTS Stmt. No. 1, p. 22. The Company's Plan provides, at page 3, that, "cognizant of the guidelines in the Commission's Secretarial Letter and the related requirements of Act 129, UGI Electric, and its consultant, Mr. Paul Raab, used an approximate 2% of annual revenues for the twelve month period ended May 31, 2008 as its expenditure guideline." EE&C Plan, p. 3.

²⁷ While noting that UGI states that its EE&C plan "includes programs and individual measures that are anticipated to produce peak load reductions of approximately 1% annually," OTS Witness Granger's point is that the Company did not design the programs and measures with the specific purpose of achieving any peak load reduction targets." EE&C Plan, p. 2. OTS Stmt. No. 1, p. 21.

However, with due recognition that UGI-Electric has only approximately 60,000 customers, OTS Witness Granger has determined and OTS recommends that the plan be modified to establish a target spending limit that would maintain costs within a level of spending that is reasonable, prudent and recognizes the smaller number of customers involved with this utility. In making such a recommendation, Mr. Granger advises that UGI-Electric should also be mindful of the its own stated opinion that while “the Commission will permit the recovery of all reasonable and prudent costs incurred in implementing and managing a voluntary EE&C plan, ... the EDC submitting the voluntary plan must justify the level of expenditures proposed whether they meet the Act 129 cost limits or not.” [Emphasis Added] Secretarial Letter, page 2. And again, the Commission has opined that it, “recognizes the Act 129 programs contain a complexity and comprehensiveness that may not be appropriate for Small EDCs, due to the costs of such programs that must be supported by a smaller customer base.” Secretarial Letter, p. 2. OTS Stmt. No. 1, p. 23.

As emphasized by OTS Witness Granger, it is important that Company establish cost limits up front and clearly define them in its EE&C plan and that recognition that it only has 60,000 customers; or 60% of the Act 129 defined Large EDC 100,000 customer base should be factored into the proposed level of plan expenditures. OTS Stmt No. 1, pp. 23-24. Weighing all factors, Mr. Granger concluded that the most prudent and appropriate course of action required a more limited plan expenditure level and that the Commission should so

determine that the proposed 2% expenditure ceiling is too high given the smaller size of UGI-Electric's customer base.

As such, OTS recommends that the Commission modify the Company's submitted plan so as to amend the expenditure limit from 2.0% to a more appropriate 1.2% (60% of 2%) of UGI-Electric's total annual revenue as of December 31, 2006, - in conjunction with the Commission's adoption of all the other OTS-recommended modifications presented in this proceeding.²⁸ OTS Stmt No. 1, pp. 23-24.

5. Recovery of Plan Costs by Customer Class

The OTS Direct Testimony, OTS Statement No. 1, at pages 24 and 25, addressed the UGI-Electric's initially proposed allocation of costs and agreed that their proposal was appropriate given that it allocated the costs so that the program costs are paid for by the same customer class that receives the energy efficiency and conservation benefits resulting from their programs. Thus, the OTS Direct Testimony reflected the then OTS recommendation that the Commission accept the cost allocation methodology as proposed by UGI. OTS Stmt. No. 1, p. 25.

In contrast to the position on this issue set out in the OTS Direct Testimony, OSBA Witness Robert Knecht's Direct Testimony recommended that the non-residential customers should be split into two groups: large non-residential

²⁸ Note that the OTS recommendation also modifies the period of time for the revenue level component of the computation, using the twelve months ended in 2006, per the period used for Act 129 program revenues, rather than the twelve month period ended in 2008 used by UGI-Electric for its expenditures calculation. OTS Stmt. No. 1, p. 23.

and small non-residential. OSBA Statement No. 1, p. 12. Furthermore, Mr. Knecht also recommended that the “common” costs be allocated among the rate class groups in proportion to the program costs that are directly assigned to each rate class group, rather than by an arbitrary overall kWh basis. OSBA Stmt. No. 1, p. 12. Finally, in Mr. Knecht’s rebuttal testimony, OSBA Statement No. 2, Mr. Knecht stated that the OTS Direct Testimony only focused upon the direct assignment of costs and did not explicitly address the Company’s proposal for the allocation of plan administrative “common” costs. OSBA Stmt. No. 2, p. 3.

In response to OSBA Witness Knecht’s Direct Testimony, Company Witness William McAllister’s Rebuttal Testimony stated the Company’s agreement with Mr. Knecht’s proposal to split the non-residential customers into two groups. UGI-Electric Stmt. No. 3R, p. 10. Mr. McAllister also stated that UGI agrees to allocate the EE&C Plan administrative costs on the basis of each class program costs as proposed by the OSBA. UGI Electric Statement No. 3R, p. 11.

Upon review of all of the then submitted testimony on this issue, OTS Witness Granger acknowledged OSBA Witness Knecht’s characterization of the OTS Direct Testimony as only focusing upon the direct assignment of costs without explicitly addressing the Company’s proposal for allocation of plan administrative “common” costs. OTS Statement No. 1-SR, p. 16 line 3, citing OSBA Statement No. 2, p. 3.

Thus, in his OTS Surrebuttal Testimony, OTS Witness Granger stated that if the Commission finds any merit to UGI Electric's proposed EE&C Plan and approves it in some manner, then he agrees with Mr. McAllister's assessment of both of Mr. Knecht's recommendations and now also supports their adoption.

Concluding discussion of this issue then, in the event that the Commission elects to amend the Company's present EE&C plan proposal to adopt all the OTS proposed modifications, OTS also concurs with the Company and OSBA agreed-upon position to split the non-residential customers into two groups for purposes of allocating costs.

6. Expansion or Modification of Customer Education

OTS did not present any specific recommendation regarding this subject.

7. Funding Percentage for Residential Lighting

OTS did not present any specific recommendation regarding this subject.

8. Modification to Commercial Lighting

OTS did not present any specific recommendation regarding this subject.

9. Notice Period for Change in Plan Rider Charges

OTS did not present any specific recommendation regarding this subject.

10. Necessity for Prudence Review of Plan

OTS did not present any specific recommendation regarding this subject.

11. Applicability of the Plan to Small Business Customers

OTS did not present any specific recommendation regarding this subject.

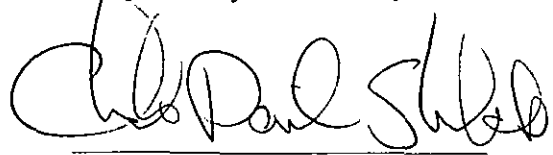
12. Other Modifications

All the OTS recommended modifications are addressed in Subsection Nos. 1-5 above.

V. CONCLUSION

Based upon our scrutiny of the instant EE&C Plan proposed by UGI Utilities, Inc.-Electric Division and our responsibility to represent the public interest, the Office of Trial Staff recommends that the Commission deny the instant Petition given that the Company has failed to meet its burden of proof to demonstrate that implementation of the plan is cost effective or that such implementation is in the public interest, a criteria that includes the best interest of customers. *In the event* the Commission determines that the inclusion of certain modifications recommended by OTS (and other parties to the proceeding) would render a plan in the best interest of customers, OTS has proposed such modifications and recommends their adoption by the Commission and their inclusion in the Order concluding this instant proceeding. The present inclusion of these OTS recommendations in the Commission's Order would also serve to clarify and provide the appropriate direction to any of the other three smaller EDCs contemplating the filing of their own EE&C plan.

Respectfully submitted,



Charles Daniel Shields
Senior Prosecutor
PA Attorney I.D. #29363

Johnnie E. Simins
Chief Prosecutor
PA Attorney I.D. #33911

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-6155

Dated: June 2, 2011

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ATTACHMENT A

PROPOSED FINDINGS OF FACT

1. A Commission Secretarial Letter dated December 23, 2009, was sent to UGI Utilities, Inc. - Electric Division with provided guidelines for the voluntary filing of an EE&C Plan and for referral of any such filing to an Administrative Law Judge for evidentiary hearings and a recommended decision.”

2. On November 9, 2010, UGI Utilities, Inc. - Electric Division filed a Petition with the Pennsylvania Public Utility Commission seeking approval of a proposed Energy Efficiency and Conservation Plan.

3. On November 29, 2011, the Office of Trial Staff filed an Answer to the Petition on November 29, 2010, and subsequently fully participated in the litigation of the instant proceeding.

4. The Office of Trial Staff has recommended denial of the instant petition as presently stated.

5. The Office of Trial Staff has recommended a number of modifications to the plan in the event that the Commission determines that some plan with modifications is appropriate.

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ATTACHMENT B

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding by virtue of the Public Utility Code, 66 Pa.C.S. §§101, et seq.

2. The Petitioner, UGI Utilities, Inc.-Electric Division has not met its burden of proving that the filed Energy Efficiency and Conservation Plan embodied in its Petition for Approval, as amended in certain respects during the course of the proceeding, is cost effective or is in the public interest, and specifically the best interest of customers.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of UGI Utilities, Inc. - Electric :
Division for Approval of its Energy : Docket No. M-2010-2210316
Efficiency and Conservation Plan :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Initial Brief**, dated June 2, 2011,
either personally, by first class mail, electronic mail, express mail and/or by fax upon the
persons listed below, in accordance with the requirements of § 1.54 (relating to service by
a party):

Mark C. Morrow, Esquire
Melanie J. Elatieh, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406

David T. Evrard, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Kevin J. McKeon, Esquire
Tori L. Giesler, Esquire
Hawke McKeon & Sniscak LLP
100 N Tenth Street
Harrisburg, PA 17101

Steven C. Gray, Esquire
Office of Small Business Advocate
Commerce Building – Suite 1102
300 North Second Street
Harrisburg, PA 17101

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111



Charles Daniel Shields
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #29363

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