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June 14, 2011

Via Hand Delivery

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

Re: Petition of UGI Utilities, Inc. – Electric Division for Approval of its Energy Efficiency and Conservation Plan; Docket No. M-2010-2210316
RESPONSE BRIEF OF UGI UTILITIES, INC. – ELECTRIC DIVISION

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and nine (9) copies of the Response Brief of UGI Utilities, Inc. – Electric Division, in the above-captioned proceeding.

As evidenced on the Certificate of Service, all parties of record have been served with a copy of this Response Brief.

Very truly yours,

Kevin J. McKeon
Counsel for
UGI Utilities, Inc. – Electric Division

KJM/bes
Enclosures
cc: Honorable Susan D. Colwell (with enclosure)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

RESPONSE BRIEF OF UGI UTILITIES, INC. – ELECTRIC DIVISION

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Dated: June 14, 2011

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I. INTRODUCTION

As the Initial Briefs in this voluntary energy efficiency and conservation (EE&C) plan filing reveal, the primary issues in controversy are UGI Utilities, Inc. – Electric Division's ("UGI Electric" or the "Company") proposals for lost revenue recovery and fuel substitution. As to each, the law is clear that the Commission has the legal authority to approve them, and the record in this case demonstrates that the Commission should. Aside from these two issues, UGI Electric's EE&C Plan is largely uncontroversial; the record reveals that the Plan as a whole is well-designed, comprehensive and cost-effective.

As the Initial Briefs of the parties also reveal, many of the issues that appeared to be in dispute at the outset are no longer disputed, either because the parties have reached agreement or the proponent of a modification has dropped its opposition. The controversies that remain relate, in general, to modifications proposed by only one of the public advocates, and in each instance UGI Electric has carried its burden to demonstrate the reasonableness of its proposal, whereas the public advocate proposing the modification has not.

As stated in UGI Electric's Initial Brief, UGI Electric urges the Commission to examine its Plan closely, but to give the Company the benefit of the doubt on any close calls, as it did with the large EDCs, and approve the filed Plan as modified by the Company in response to issues raised by the intervenors during the course of this proceeding.

II. HISTORY OF THE PROCEEDING

In accordance with the procedures set forth in the Scheduling Order as modified, the Initial Briefs of the parties were filed on June 2, 2011. In addition to briefs filed by the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Office of Trial Staff ("OTS"), and the Sustainable Energy Fund ("SEF"), an *Amicus Curiae* Brief was filed

by a group of industrial users, including the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA") and West Penn Power Industrial Intervenors ("WPPII"). UGI Electric refers to this group throughout this Response Brief as "the *Amicus*." The *Amicus* addresses the lost revenue issue only, *i.e.*, the issue designated as IV.C.1. "Elimination of Any Revenue Recovery Mechanism."

In accordance with the Procedural Schedule adopted in this case, this Response Brief is being filed June 14, 2011.

III. SUMMARY OF ARGUMENT

As it did in its Initial Brief, UGI Electric urges the Commission to approve its EE&C Plan as filed, with modifications to which UGI Electric has agreed to date. Specifically, UGI Electric has agreed to: (1) include solar thermal water heating in its fuel switching proposal; (2) provide 30-days' notice to customers, as opposed to 1-day's notice, of any adjustments, whether upward or downward, for both the EE&C Rider and the CD Rider; and (3) revise customer classes for the recovery of EE&C Plan costs and CD Rider lost revenues. In addition, to address the issue raised by the OCA concerning PJM Revenue crediting, UGI Electric provides in this Response Brief that it would not object if the Commission were to direct UGI Electric to investigate the feasibility of using revenue received from PJM auctions as an offset to Plan costs.[1]

[1] *See infra* at 32.

Intervenors who have proposed modifications to the Plan have the burden of proving the reasonableness of their proposed modifications, and, except as provided above, have failed to do so. In contrast, every aspect of UGI Electric's Plan, as modified, is supported by evidence that makes out a *prima facie* case.

The primary issues in contention, and to which most of this Response Brief is devoted, are lost revenue recovery and fuel substitution. The law is clear that the Commission has the necessary legal authority to approve each, and the record supports the desirability of UGI Electric's proposals.

With respect to lost revenue recovery, the public advocates and the *Amicus* present an array of legal arguments in opposition, but none can overcome a fundamental hurdle: the Commission already decided in the *1993 DSM Order*[2] that lost revenue recovery is lawful under Section 1319 of the Public Utility Code, and the Commonwealth Court did not hold otherwise in the appeal from the *1993 DSM Order.* As a consequence, the state of the law is that the Commission has already ruled that lost revenue recovery is not prohibited single-issue ratemaking, does not run afoul of the Section 1301 "just and reasonable standard," is not prohibited by Section 1319, and is not a form of impermissible "guaranteed revenue recovery." Neither Act 129 (which does not apply to a smaller EDC such as UGI Electric), nor the Commission's Secretarial Letter of December 23, 2009 at Docket No. M-2009-2142851 ("Secretarial Letter")[3] (which applies some, but not all, aspects of Act 129 to voluntary plans filed by smaller EDCs), alter that fundamental legal reality. As for whether lost revenue recovery is a good idea from a regulatory policy perspective, the *1993 DSM Order* already

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[2] *Investigation Into Demand Side Management By Electric Utilities Uniform Cost Recovery Mechanism,* 80 Pa. P.U.C. 608, 633-641 (1993) ("*1993 DSM Order*").

[3] Secretarial Letter Re: Voluntary Energy Efficiency & Conservation Program, Docket No. M-2009-2142851 (December 23, 2009) ("Secretarial Letter").

answers that question as well: "We consider it appropriate and necessary to, in effect, jump start the DSM process through the implementation of a special ratemaking mechanism [*i.e.*, one that includes a lost revenue recovery component]." *1993 DSM Order* at 623. That policy determination holds no less weight today; EDCs that are not required to file EE&C plans are faced with a very significant economic disincentive to implement such plans, absent the opportunity for lost revenue recovery. The only issue of substance that has changed since the *1993 DSM Order* is that "lost revenues" are now easily measured: "lost revenues" is the flip side of the "deemed energy savings" coin against which all EE&C plans are measured. It simply would be intellectually dishonest to "deem" a particular level of energy in kWh to be saved when a particular EE&C measure is adopted, but not use the same calculation to quantify the revenue lost when such "saved" kWhs are not distributed by the EDC.

With respect to fuel substitution, the Initial Briefs reflect that all parties essentially concede that fuel substitution is legally permissible. The OTS' proposal to eliminate UGI Electric's fuel substitution programs altogether, and the OCA's proposed drastic modifications, have no support in the record and should be rejected. Fuel substitution stands on its own as a highly effective energy conservation measure and UGI Electric's proposed fuel substitution program should be approved on that basis and for that reason.

With respect to most other issues, UGI Electric rests on the arguments presented in its Initial Brief. Many of the issues are no longer contested. Others are contested by only one proponent of a modification, and in each case the proposed modifications are either unsupported or unduly intrusive into UGI Electric's carefully-balanced Plan.

As stated in its Initial Brief, UGI Electric is sincerely commited to implementing a successful EE&C plan. It has agreed to reasonable modifications to the Plan that are supported by

the evidence in response to proposals made by SEF, OCA and OSBA. There is no reason for further modifications, and UGI Electric urges the adoption and approval of the Plan as modified to date.

IV. ARGUMENT

A. Burden of Proof/Applicable Legal Standard

The parties are in agreement that the burden of proof in this proceeding rests on UGI Electric. That does not mean that the public advocates bear no burden, however. The law is clear that where, as here, intervenors propose adjustments to the company's filing, the proposing party bears the burden of presenting "some evidence or analysis tending to demonstrate the reasonableness of the adjustment." *Pa. Pub. Util. Comm'n v. PECO Energy Co. – Elec. Div.*, Docket No. R-2010-2161575, 2010 WL 5651175, at *13 (Dec. 21, 2010) (Commission rejected OTS adjustment to PECO proposal where PECO carried its burden to establish a *prima facie* case and the OTS failed to sustain its burden of persuasion to rebut PECO's *prima facie* case).

Here, UGI Electric has presented its Plan, modified in three instances consistent with the evidence presented by the OCA (Notice), the OSBA (creation of two non-residential classes), and SEF (addition of solar thermal water heating as an available resource).[4] As modified, UGI Electric has presented comprehensive evidence and carried its burden to establish its *prima facie* case in support of the Plan. SEF now supports the Plan as modified. *See* SEF Stipulation; SEF Init. Br.

The public advocates have failed to sustain their burden of persuasion to rebut UGI Electric's *prima facie* case and justify their proposed modifications to the Plan. With respect to the lost revenue recovery issue, the additional arguments presented by the *Amicus* are likewise unavailing.

[4] UGI Electric also is willing to investigate the possibility of implementing the OCA's PJM revenue crediting proposal. *See infra* at 32.

B. Filed Plan

1. Position Regarding Approval of Plan as Filed

UGI Electric's position is that its EE&C Plan should be approved as proposed and amended, and that the other modifications proposed by the public advocates be rejected. Rather than reply to specific issues raised by the OTS and the OSBA under this (B.1.) argument heading, OTS Init. Br. at 13-18; OSBA Init. Br. at 6-8, UGI Electric responds to their arguments by topic under the "Proposed Modification to Filed Plan" section of this Response Brief.

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

UGI Electric's position is that its Plan fully complies with the requirements specifically set forth in the Secretarial Letter. The OCA essentially agrees, but with the new caveat that it believes the Secretarial Letter imposes a 2% cap on Plan expenses, which, in OCA's view, UGI Electric has improperly exceeded.[5] OCA Init. Br. at 7-8. The OSBA, for its part, maintains that the Plan does not comply with the Secretarial Letter because it proposes recovery of lost revenues, suggesting that in all other respects the Plan complies with the Secretarial Letter.[6] OSBA Init. Br. at 8-10. OTS contends that the Plan "fundamentally fail[s] to adhere to the guidelines set up" by the Secretarial Letter in numerous respects. OTS Init. Br. at 19. UGI Electric responds as appropriate to each of OTS' criticisms in its discussion of the respective substantive topics within this Responsive Brief.[7]

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[5] UGI Electric responds substantively to the OCA's criticism of Plan expenditure levels *infra* at 26-28 under the heading "C.4. Reduction in Total Plan Expenditure Levels."

[6] UGI Electric addresses OSBA's concerns about lost revenues *infra* at 9-22 under the heading "C.1. Elimination of Any Revenue Recovery Mechanism."

[7] UGI Electric responds substantively to the OTS' concerns *infra* at 7-8, 14-17, 18-19; 22-23, and 25-28.

3. Filed Plan's Cost-Effectiveness

UGI Electric's Plan, as filed, is cost-effective under the only test adopted by the Commission in the Secretarial Letter for evaluating the cost-effectiveness of voluntary plans – the TRC Test. Secretarial Letter at 1-2. The total Plan benefit-to-cost ratio of 2.04 is far in excess of the 1.0 minimum TRC Test parameter required of the large EDCs' EE&C Plans under Act 129. UGI Electric Exhibit 1 at 70. The OCA and OSBA effectively concede this point. OCA Init. Br. at 8-9 ("the OCA does not dispute that on a strictly mechanical TRC B/C ratio basis, the Plan is cost-effective"); OSBA Init. Br. at 10-11 ("the OSBA does not take issue with the *Petition's* use of the TRC Test for the Plan's various EE&C measures").[8] OTS, in contrast, disputes the Plan's cost-effectiveness, notwithstanding that the Plan passes muster under the TRC Test, on grounds that inclusion of a lost revenue recovery component and a "dodgy fuel switching program," OTS Init. Br. at 21, "would not and could not be cost-effective." OTS Init. Br. at 23.

Although UGI Electric has already responded to the OTS' concerns in its Initial Brief, UGI Electric Init. Br. at 27-28, the claim that the Plan is not cost-effective because it includes a lost revenue recovery component and a fuel switching program, raised directly by the OTS and implied by the OCA, OCA Init. Br. at 9, merits further response.

UGI Electric's Plan generates in excess of $15 million in TRC net benefits over its first three years. UGI Electric Exhibit No. 1 at 70. Over the same three years, the budget for Plan costs is $8.6 million. *Id.* Approximately $7.5 million of the $8.6 million in Plan costs are

[8] Each also caveats the concession, with the OCA arguing that "any recovery of lost revenue adds costs to the Plan," OCA Init. Br. at 9, and the OSBA observing that, because UGI Electric is not "subject to the mandatory targets and penalties that Act 129 imposes on larger EDCs," OSBA Init. Br. at 11, the Commission should require an *ex post* prudence review of the Plan costs. Rather than address these issues here, UGI Electric addresses them, respectively, in the Sections of this Responsive Brief headed "C.1. Elimination of Any Revenue Recovery Mechanism," *see infra* at 9-22 and "C.10. Necessity for Prudence Review of Plan," *see infra.* at 30-31.

already included in the calculation of net TRC Benefits. *Id.* Total anticipated lost revenue recovery is approximately $1.7 million. Total revenue to be gained by UGI Electric affiliates from fuel switching is *de minimus*, approximately $0.1 million over three years. UGI Electric Statement No. 3R at 3:4.[9] Therefore, even assuming it is appropriate to include in the cost-effectiveness assessment lost revenue recovery to UGI Electric and revenue gain to UGI Electric affiliates (and it is not, by the Commission's own terms), Plan net benefits to UGI Electric ratepayers still are approximately $12.3 million over the first three years of the Plan.[10] Accordingly, OTS' claim, and OCA's implication, that the Plan "could not and would not" be cost-effective if one takes into consideration interim lost revenue recovery and potential affiliate fuel switching revenues is simply wrong.

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

As the Initial Briefs reveal, there appears to be no dispute that UGI Electric may withdraw the Plan if the Commission modifies it by eliminating lost revenue recovery or by making some other change that makes implementation unattractive to the Company. *See, e.g.,* OCA Init. Br. at 9 ("the OCA understands ...that the Company may withdraw its Plan"); OSBA Init. Br. at 11 ("If the Company were to withdraw its *Petition* ...the OSBA would not object"); OTS Init. Br. at 23-24 (reciting, without advocating against, UGI Electric's position that it may withdraw the Plan if modified by the Commission in a manner unacceptable to the Company). Regardless, as argued in UGI Electric's Initial Brief, even if there were a dispute as to UGI Electric's ability to withdraw its Plan, there is no reason to decide it now, because the matter

[9] UGI Electric quantified the potential revenue gain by Penn Natural Gas, Inc. ("PNG"), UGI Electric's affiliated NGDC, at approximately $38,000 for the first year of the Plan. UGI Electric Exhibit WJM-5.

[10] $15.2mm (TRC Net Benefits) – $8.6mm (Program Costs) + $7.5mm (Program Costs already included in TRC calculation) - $1.7mm (Lost Revenue) - $0.1mm (Fuel Switching revenue gained by affiliate) = $12.3mm.

would not be ripe for decision unless and until the Commission modifies the Plan and UGI Electric advises the Commission of its intent to withdraw it rather than implement it as modified. UGI Electric Init. Br. at 14-15.

C. Proposed Modifications to Filed Plan

1. Elimination of Any Revenue Recovery Mechanism

a. Lost Revenue Recovery is Lawful

The public advocates and the *Amicus* concede or tacitly acknowledge that the Commission already decided in the *1993 DSM Order* that lost revenue recovery is lawful under Section 1319 of the Code, and that the Commonwealth Court did not hold otherwise in PIEC 's appeal from the *1993 DSM Order*. *See, e.g.*, OCA Init. Br. at 13 n.3 (*1993 DSM Order* "permitted electric utilities to accrue in a balancing account as a regulatory asset, the lost revenues resulting from the implementation of demand side management programs" and the Court on appeal "did not consider this issue."). Undaunted, the public advocates and the *Amicus* attack the *1993 DSM Order*'s holding, arguing that lost revenue recovery is unlawful because it violates:

- The alleged prohibition against single issue ratemaking. OCA Init. Br. at 12-13; OSBA Init. Br. at 11-12; *Amicus* Br. at 6-7; OTS Init. Br. at 24 (permitting lost revenue recovery "is completely contrary to [unspecified] well-established and fundamental ratemaking principles");
- Section 1301's "just and reasonable" requirement. OCA Init. Br. at 13; *Amicus* Br. at 5;
- Act 129's prohibition on lost revenue recovery. OCA Init. Br. at 12-13 and n.3; *Amicus* Br. at 7;
- The Secretarial Letter's specification of cost recovery rather than revenue recovery, OTS Init. Br. at 25;
- Section 1319's focus on recovery of "costs" rather than "revenues." *Amicus* Br. at 8-9; and
- The rule that utilities may not receive a guarantee of revenues. OTS Init. Br. at 24; *Amicus* Br. at 6.

None of these arguments has merit, and UGI Electric rebuts each of these arguments in more detail below.

(i) Single Issue Ratemaking

Under traditional rate base/rate-of-return regulation, a utility's rates are fixed in the context of a "base rate" proceeding after an examination of expenses, revenues, taxes and return, and go into effect on a prospective basis; the rates themselves are not applied retroactively to past sales, and any changes to the rates as fixed occur only after a similar comprehensive re-examination in the context of a future base rate proceeding. *See, e.g., Popowsky v. Pa. Pub. Util. Comm'n.*, 869 A.2d 1144, 1152 (Pa. Cmwlth. 2005) ("*Popowsky 2005*"). It is within this context that the alleged prohibition on "single-issue" ratemaking arises. The courts have held that, as a general matter, it is inappropriate to adjust rates to reflect a change in a single revenue or expense item, absent special circumstances. *See, e.g., Pennsylvania Industrial Energy Coalition v. Pa. Pub. Util. Comm'n.*, 653 A.2d. 1336, 1349-50 (1995) *aff'd per curium*, 670 A.2d. 1152 (1996) ("*PIEC*") 1349-1350.

Of course, there is no general prohibition against single-issue ratemaking. The Public Utility Code expressly permits single-issue ratemaking pursuant to Section 1307. *See, e.g., Popowsky v. Pa. Pub. Util. Comm'n.*, 13 A.3d 583, 593 (Pa. Cmwlth. 2011) ("*Popowsky 2011*"). Moreover, the Commission and the courts have long recognized that, under certain circumstances, single-issue ratemaking that has a retroactive effect is a necessary and appropriate exception to the general rule that base rates may be changed prospectively only. *See, e.g., Popowsky v. Pa. Pub. Util. Comm'n.*, 868 A.2d 606 (Pa. Cmwlth. 2004) ("*Popowsky 2004*").

To the extent that the Commission were to permit UGI Electric to recover lost revenues through its preferred method, a Section 1307 surcharge in the form of the CD Rider, the

single-issue ratemaking criticism leveled by the public advocates and the *Amicus* is simply inapplicable. PIEC lost that argument in its appeal from the *1993 DSM Order*, where the Commonwealth Court held that single-issue ratemaking is an issue that arises in the context of base rate proceedings, whereas Sections 1307 and 1319 expressly authorize an automatic adjustment of rates for recovery of conservation-related costs outside of a base rate proceeding. *PIEC* at 1350.

With respect to UGI Electric's alternative proposal for regulatory asset treatment of lost revenues, recovery is entirely appropriate under the controlling law. Where, as here, a utility can demonstrate a credible basis for recovering an extraordinary item between rate cases, the Commission has approved such recovery and the courts have affirmed it. In *Popowsky* 2004, where Pennsylvania-American Water Company claimed recovery of increased security expenses incurred between rate cases in the wake of the September 11 attacks, the Commission approved it and the Commonwealth Court affirmed because: (1) the cost did not arise as the result of inaccurate projections in a previous rate case; (2) the cost was extraordinary at the time incurred; and (3) the company had attempted promptly to recover the cost through a surcharge, which the PUC had denied in favor of deferred accounting treatment. *Id.*

Applying the same three-factor test here, UGI clearly is entitled to recovery of lost revenues. First, its lost revenue claim does not arise because of an "inaccurate" revenue projection in its previous base rate case that it seeks to correct, but instead arises from a wholly new event – revenue loss occasioned by its compliance with the Commission's desire to encourage smaller EDCs to file voluntary EE&C plans. Second, and for the same reasons, the lost revenues in question are "extraordinary" because, in contrast to all other situations in which a for-profit enterprise seeks to prevent loss of revenues, here UGI Electric is affirmatively and

purposefully taking steps that will result in a loss in revenues by encouraging its customers to reduce their electricity consumption. Third, UGI Electric's attempt to recover the revenues it will lose between the time of implementation of its EE&C Plan and its next base rate case obviously constitutes "immediate action," because it seeks rate recovery in the very same filing in which it is proposing the Plan that will cause the loss.

Accordingly, should the Commission not approve UGI Electric's proposed CD Rider but allow the recovery of lost revenues in this case as a regulatory asset, it most assuredly would not constitute prohibited "single-issue ratemaking." UGI Electric's claim fits squarely within Commission and court case law that permits recovery of extraordinary items between rate cases as an exception to the general rule that rates are set only in a base rate case with prospective-only application.

(ii) Section 1301

OCA and the *Amicus* also argue that lost revenue recovery violates Section 1301 of the Public Utility Code because the impact of lost revenues is "highly speculative" and thus cannot be examined properly except in the context of a base rate proceeding. OCA Init. Br. at 13-16; *Amicus* Br. at 5-6. PIEC challenged the Commission's *1993 DSM Order's* allowance of regulatory asset treatment of lost revenues on this same basis. *PIEC* at 1352-1353. Although the Court declined to reach the issue on the grounds of ripeness due to the then-difficult task of accurately calculating the actual amount of revenue lost as a result of a conservation program, the Court recognized "the possibility that a sufficiently reliable calculation could be developed." *Id.* at 1352.

The "deemed savings" values developed in the TRM to measure electricity savings for Pennsylvania's conservations programs now provide all the specificity and reliability needed that

may have been lacking at the time the Commission adopted the *1993 DSM Order*. "Deemed savings" are the basis upon which the Commission is measuring saved kilowatt hours; all stakeholders have agreed to use that metric as the cornerstone of conservation plans. If it is reliable for that purpose, it necessarily is sufficiently reliable for purposes of measuring the revenues lost associated with the kilowatt hours saved. *See* UGI Electric Init. Br. at 25-26.

In support of its claim that UGI Electric's quantification of lost revenues is "highly speculative," the OCA relies entirely on Mr. Crandall's unsupported assertion that even though "deemed savings" are an acceptable method for measuring reduced electricity consumption, they are only a "coarse indicator" of the revenues directly associated with that reduced consumption that will be lost. *See* OCA Init. Br. at 14 (quoting OCA Statement No. 1 at 22-24). This refusal to acknowledge the inescapable relationship between specific levels of energy savings and specific amounts of lost revenues is neither supported nor credible. Moreover, to the extent Mr. Crandall provided detail about his concerns with use of the deemed savings measurements for this purpose, he missed the mark by a wide margin. For example, he claimed that conservation programs would result in "resource savings that offset a considerable amount of costs, *i.e.*, expensive power supply costs." OCA Init. Br. at 14 (quoting OCA Statement No. 1-S at 16). As explained by UGI Witness McAllister, however, there is no need to reflect cost reduction offsets for purchased power costs because the lost revenues UGI Electric needs to recover are losses in *distribution* revenues, whereas purchased power costs will be automatically adjusted (thereby making customers whole) through the GSR mechanism: "To the extent the EE&C Plan's programs help consumers conserve electricity, purchases of electricity by UGI Electric will decrease, and lower purchased power costs will automatically be reflected in the calculation of the customers' GSR Rates."). UGI Electric Statement No. 3RJ at 5:11-14. Similarly, Mr.

Crandall claimed that the proposal for lost revenue recovery lacks specificity because it lacks an earnings review component. OCA Statement No. 1 (Surrebuttal) at 16:18-19. As Mr. McAllister explained, however, there is no need for such a review because of the very direct correlation between deemed savings and lost revenues:

> [T]here would be no need for an earnings review under our lost revenue recovery proposals. We propose to quantify the lost revenues associated with the conservation programs that we are proposing on the basis of the deemed savings that correlate with the conservation measures that our customers elect to implement. Whether we recover those lost revenues through our CD Rider or through a regulatory asset, there will be no "second guessing" of the level of lost revenues on the basis of an earnings review. Rather, if a UGI Electric customer participates in one of our programs, the deemed savings associated with that activity results in a specified loss in revenue and that specified loss in revenue is the amount we would be entitled to recover.

UGI Statement No. 3RJ at 5:17-6:3. The OCA did not challenge Mr. McAllister's rebuttal of Mr. Crandall's points on cross examination.[11]

In this context, the Section 1301 "just and reasonable" requirement means that lost revenues be determined with a "sufficiently reliable calculation." *PIEC* at 1352. "Deemed savings" as set forth in the TRM amply satisfies that criterion.

(iii) Act 129

Acknowledging that Act 129 does not apply to UGI Electric, *see e.g., Amicus* Br. at 7 ("Act 129 arguably may not directly apply to smaller EDCs"), the public advocates and the *Amicus* nonetheless take the position that because Act 129 proscribed lost revenue recovery for large EDCs in Section 2806.1(k) of the Public Utility Code, that same proscription somehow applies to smaller

[11] The OCA's attempt to bolster Mr. Crandall's "coarse indicator" claim with the argument that the text of the TRM fails to state that the energy savings it identifies are to be used for ratemaking purposes, OCA Init. Br. at 15-16, simply ignores the context in which the TRM was produced and denies the inescapable truth that "deemed savings" in kilowatt hours necessarily produce an equivalent amount of lost revenues in dollars.

EDCs, such as UGI Electric, that are not subject to Act 129. OTS Init. Br. at 25 ("while Act 129 is not directly applicable to UGI Electric's proposed plan ...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 ...any ...jurisdictional EDC – regardless of size."); OCA Init. Br. at 17 (lost revenue recovery "is contrary to the express public policy of the Commonwealth"); OSBA Init. Br. at 12 (Act 129 is an "apparent legislative proscription" against lost revenue recovery); *Amicus* Br. at 7 (the "General Assembly's general disfavor for [lost revenue recovery] is apparent through Act 129."). Indeed, the OCA goes so far as to assert that Act 129's lost revenue recovery proscription "must supersede any earlier decision of the Commission [*i.e.*, the *1993 DSM Order*]," OCA Init. Br. at 13 n.3, for all EDCs, including EDCs not covered by Act 129. These arguments turn the basic principles of statutory construction upside down.

Act 129, which added Section 2806.1 to the Public Utility Code, expressly prohibits large EDCs from recovering lost revenues due to reduced energy consumption, other than prospectively through a Section 1308 base rate proceeding. But the legislature expressly stated that Section 2806.1 "shall not apply to an electric distribution company with fewer than 100,000 customers." 66 Pa.C.S. § 2806.1(l). Necessarily, therefore, although Act 129 changed the law (as articulated in the *1993 DSM Order*) with respect to the Act 129 activities of large EDCs, the legislature consciously chose to leave undisturbed that same law concerning EDCs not covered by the provisions of Act 129.

It is thus clear on the face of Act 129 that the legislature intended to leave the law undisturbed with respect to smaller EDCs not covered by Act 129. When a statute is clear in this manner, it is dispositive of legislative intent and there is no need for further interpretation. *Lynnebrook & Woodbrook Assoc. L.P. v. Millersville,* 963 A.2d 1261, 1265 (Pa. 2008). If the

Commission nonetheless were to apply principles of statutory construction, however, the result would be the same. Where, as here, a statutory provision such as Section 1319 is interpreted by an agency as it was in the *1993 DSM Order*, and the legislature thereafter has the opportunity to amend the statute to negate the interpretation, but does not do so, an implied legislative approval of the interpretation arises. *Hospital Ass'n of Pa. v. MacLeod*, 487 Pa. 516, 523 n.10, 410 A.2d 731, 734 n.10 (1980). The Commission clearly interpreted Section 1319 in the *1993 DSM Order* to permit recovery of lost revenues. The legislature is presumed to know of that interpretation, but never amended Section 1319. Instead, it amended the Public Utility Code to add Section 2806.1, but expressly chose not to apply that new provision to smaller EDCs such as UGI Electric. The necessary conclusion, therefore, is that Section 1319 and the *1993 DSM Order* interpreting it, except as modified in Act 129 for EDCs with 100,000 or more customers, remain enforceable law and stand for the proposition that recovery of lost revenues associated with energy conservation measures is permissible. If the legislature had intended to proscribe lost revenue recovery associated with conservation measures for all natural gas and all electric public utilities covered by Section 1319, it would have done so. It did not.

(iv) Secretarial Letter

OTS argues that it "can reasonably be inferred" from the Commission's Secretarial Letter specifically permitting smaller EDCs to recover EE&C plan *costs* through a reconcilable surcharge that the Commission intended by omission to preclude the recovery of lost revenue. OTS Init. Br. at 26 (quoting OTS Statement No. 1 at 13-14). There are two responses to this argument.

The first is that the Secretarial Letter mandates inclusion of particular components from Act 129 into a smaller EDC's EE&C plan, and Act 129's prohibition on lost revenue recovery is

not one of those mandatory measures. For example, a smaller EDC's petition "must contain at least" six enumerated components, Secretarial Letter at 1, Paragraph 2, and must follow Act 129's "definition of an energy efficiency and conservation measure." Secretarial Letter at 1, Paragraph 3. In addition, a smaller EDC's plan must use the "energy savings" values in the TRM and the TRC to determine whether each program is cost-effective. *Id.* If the Commission had intended in the Secretarial Letter to import Act 129's prohibition on lost revenue recovery, it knew how to do so. It did not.

The second response to OTS' interpretation is that, as discussed below, the Commission long ago (in the *1993 DSM Order*) interpreted conservation plan "costs" to include lost revenues. There is no reason to believe that the Commission, in the Secretarial Letter, was not using the same definition of "costs" when it stated that smaller EDCs (that are not subject to Act 129) may recover their EE&C plan "costs" through a Section 1307 surcharge.

(v) Section 1319

Relatedly, the *Amicus* argues that Section 1319 of the Code permits electric and gas utilities that file a "voluntary" EE&C plan to recover "costs" of the plan through a 1307 surcharge, but that lost distribution revenues are not "costs." *Amicus* Br. at 8-9. Respectfully, the Commission decided precisely the opposite in the *1993 DSM Order*. *See, 1993 DSM Order* at 641 ("we feel it necessary to require that these *costs* [*i.e.*, lost revenues] be recovered through a base rate proceeding"; "we will permit the utilities to use a balancing account for the *lost revenue costs*, and they will be treated as regulatory assets"; "this will ensure that the utilities will be 'made whole' for their DSM *lost revenue costs*," even though they will not be permitted to collect them up front through the surcharge.) (Emphasis supplied). On review of the *1993 DSM Order*, the Commonwealth Court in *PIEC* failed to reach the issue because *PIEC* waived it.

It noted, however, that "the PUC contends that the allowance of lost revenue recovery is authorized under Section 1319 of the Code, which states 'the commission shall allow the public utility to recover all prudent and reasonable costs associated with the development, management, financing and operation of the program.'" *PIEC* at 1352. Accordingly, the state of the law on this issue is the Commission's holding in the *1993 DSM Order*: lost revenues are "costs" for purposes of Section 1307 recovery under Section 1319.[12]

(vi) Revenue Guarantee

Finally, OTS and the *Amicus* argue that basic ratemaking principles prohibit the Commission from providing a utility with a "guarantee" of revenues, and that UGI Electric's lost revenue recovery mechanism violates that rule. OTS Init. Br. at 24; *Amicus* Brief at 6. There is no basis for this claim. UGI Electric is not asking the Commission to guarantee that, notwithstanding implementation of its EE&C Plan, UGI Electric will continue to recover a "baseline" revenue amount. Thus, UGI Electric is not seeking to recover lost revenue associated with business downturns or non-Plan conservation reductions in electricity usage. Neither the proposed CD Rider, nor the proposed regulatory asset, is structured to capture such revenues. Rather, UGI Electric merely is proposing that for each conservation measure covered by the Plan that is implemented by a customer and produces "deemed savings" in electricity, UGI Electric will lose revenue in a corresponding amount that shall be recovered. This is not a "revenue guarantee," but rather a simple identification and capture of revenues UGI Electric would have received but-for implementation of a particular Plan measure. It is a "make whole" provision of the type the Commission approved in the *1993 DSM Order*, only much easier to measure. It is not a "guarantee" of revenues that UGI Electric had hoped to achieve, but rather a payback of

[12] Inexplicably, *Amicus* cites *PIEC* as authority for the opposite proposition - - that lost revenues are not "costs." *Amicus* Br. at 9 n.24.

revenues that UGI Electric would have received but did not because of the implementation of a particular Plan measure.

b. Lost Revenue Recovery is Desirable As a Matter of Policy

UGI Electric anticipated and rebutted the public advocates' policy arguments against lost revenue recovery in its Initial Brief, UGI Electric Init. Br. at 24-28, and will not repeat those arguments here. As the Commission already decided in the *1993 DSM Order,* lost revenue recovery is an integral part of any rate mechanism designed to encourage a utility's voluntary conservation plan. *1993 DSM Order* at 623 ("we consider it appropriate and necessary to, in effect, jump start the DSM process through the implementation of a special ratemaking mechanism.").

Two points raised by the public advocates merit brief further comment.[13]

First, OCA argues, without any attempt to quantify specific amounts, that the decreased revenues UGI Electric projects are "likely to be recouped in some measure" through revenue increases to UGI Electric affiliates as a result of fuel switching. OCA Init. Br. at 17. The affiliates OCA claims would benefit are: (1) PNG, the Company's affiliated NGDC whose service territory partially overlaps with UGI Electric's; (2) Amerigas, UGI Electric's affiliated propane supplier; and (3) UGI Energy Services, Inc. ("UGIES"), UGI Electric's affiliated natural gas supplier. *Id.* (quoting OCA Statement No. 1 at 13). Even if this argument had conceptual merit (and it does not), the OCA's claim is wholly unsupported. The only potential affiliate revenue increase worth quantifying is the potential increase in PNG's natural gas distribution revenues, which Mr. McAllister estimated at approximately $38,000, or roughly only 10% of the revenues that UGI Electric anticipates to lose in the first year of the Plan. UGI Electric

[13] The OCA's argument that "deemed savings" is inappropriate to use as a measure of lost revenues is addressed *supra* at 12-14.

Statement No. 3R at 6:1-15. There is no other evidence on the record attempting to quantify this amount, and no party challenged Mr. McAllister's computation in surrebuttal testimony or on cross-examination. With respect to Amerigas, an unregulated propane supplier that participates in a highly competitive market; the only record evidence indicates that there will be little, if any, *fuel switching from electric to propane. As Mr. Raab explained:*

> [p]ropane has a relatively low benefit to cost ratio of 0.49. ...[T]he relative cost-ineffectiveness of conversions to propane will significantly limit the number of such conversions, so that they are unlikely to have a signficant (or any) impact on the Plan's overall positive TRC result.

UGI Electric Statement No. 2RJ at 3:17-21. With respect to UGIES, the Commission's own website confirms that UGIES faces competition from in excess of 35 other natural gas suppliers that are licensed to provide NGS service in the area of UGI Electric's service territory that overlaps with PNG.[14] Given that these 36 suppliers are competing to provide fewer than 10,000 mcf in annual natural gas volumes in the first year of the Plan, *see* Exhibit WJM-5, the level of potential new revenue, if any, to UGIES, is barely measureable. Accordingly, other than bald accusations, there is neither a principled nor a factual basis for the public advocates' claim that UGI Electric's fuel switching programs will enrich its affiliaties.

Even if there were such evidence, it would not be a principled basis for denying lost revenue recovery. As Mr. McAllister explained, it would be inappropriate to impute any increase in revenues to UGI Electric's affiliates to UGI Electric, because UGI Electric is a separate legal entity whose rates and revenue requirements are determined by its own revenues and expenses, and not those of its affiliates. UGI Electric Statement No. 3R at 5:11-13. Moreover, as UGI Electric Witness Raab explained, from the policy perspective, it is *desirable* for there to be an

[14] http://www.puc.state.pa.us/naturalgas/naturalgas_suppliers_list.aspx.

increase in end-use gas load as part of a conservation plan, because fuel switching to decrease electric load "is at the heart of the full-fuel-cycle concept that has been so widely endorsed [by DOE, NARUC, AGA and NRDC]." UGI Electric Statement No. 2R at 18:2-12.

Second, OCA and OSBA argue that "there is no certainty" that denial of lost revenue recovery in this proceeding will advance the timing of UGI Electric's next base rate case. OCA Init. Br. at 16; OSBA Init. Br. at 13-15. Surely, however, there can be no doubt that, all things equal, if UGI Electric were to implement its Plan without lost revenue recovery, doing so will significantly accelerate its need to file a base rate proceeding. UGI Electric's unchallenged estimate is that, by Year 3 of the Plan, annual lost revenue will be in excess of $1 million. Whether that drops UGI Electric's projected adjusted return on equity to 10%, or 9.5%, there can be no dispute that a revenue loss of that magnitude will necessitate the filing of a base rate case sooner (and likely much sooner) than later.[15] As Mr. McAllister explained, allowance of lost revenue recovery through either the CD Rider or regulatory asset treatment will, all things equal, allow UGI Electric to defer the filing of a base rate proceeding for a substantial period of time. UGI Electric Statement No. 3RJ at 6:22-7:1; Tr. at 109-115.

Plainly, from a policy perspective, it is desirable to allow lost revenue recovery as part of UGI Electric's EE&C plan. Denying recovery will either force the Company to withdraw the plan or dramatically accelerate the filing of a base rate case. As Mr. McAllister explained, UGI Electric customers will lose either way, because:

[15] In arguing that UGI Electric will not need to file a base rate case until its ROE drops below 9.5%, OSBA Init. Br. at 14-15, the OSBA treats the relationship between lost revenue and ROE as though it were a static, rather than a dynamic phenomenon. Without a recovery mechanism, UGI Electric will continue to lose revenues each year into the future, so that ROE will continue to drop, thereby forcing a base rate case filing much sooner than would otherwise occur.

> [T]hey will either lose the benefits of our proposed EE&C plan or they will end up paying a higher rate sooner than they otherwise would have paid them because UGI Electric will be recovering in the new base rates the projected lost revenues, plus all of the other increases in base rate components it is entitled to recover, plus the cost of adjudicating the lost revenue claim and all of the other issues in a base rate case filed earlier than otherwise would have been necessary. There is just no question that it is far better for customers to compensate the Company for lost revenues through some mechanism that allows the Company to recover interim lost revenues and defer the filing of a base rate case.

UGI Electric Statement No. 3RJ at 7:6-14.

2. Elimination or Modification to Fuel Switching Program

As with the lost revenue issue, UGI Electric anticipated and rebutted many of the public advocates' policy arguments against UGI Electric's proposed fuel switching programs in its Initial Brief, UGI Electric Init. Br. at 33-44, and will not repeat those arguments here. Noteworthy is that all parties appear to agree, as they must, that fuel switching is permitted and desirable as a matter of public policy. However, several points raised by the public advocates merit brief further comment.

a. Fuel Neutrality

OTS' argument that UGI Electric's fuel switching programs are not "fuel neutral," OTS Init. Br. at 29, ignores the reality that UGI Electric's fuel switching programs, as amended by the SEF stipulation to include solar thermal water heating, now contain *all* alternative energy sources that *any* party has shown to be cost-effective. As Mr. Raab stated in rebuttal: "[I]t is easy for parties to speculate that there may be other cost-effective technologies, but they should be required to support that position with concrete proposals. This is particularly germane here, where there has been little or no evidence presented that viable alternatives exist." UGI Statement No. 2R at 34:20-35:1. SEF, the only entity that proposed and supported

a cost-effective alternative fuel type, now supports the Plan, as amended to include solar thermal water hearing. SEF Init. Br. at 8-10.[16]

b. Incentive Levels

The OCA continues to advocate drastic and arbitrary cuts to UGI Electric's proposed incentive payments. OCA Init. Br. at 18-24. This approach is consistent with OCA Witness Crandall's willingness to find fault with UGI Electric's carefully balanced Plan,[17] but here, the OCA also goes out of its way to quote UGI Electric Witness Raab out of context in an attempt to demonstrate that the proposed incentives are too high. Specifically, the OCA attempts to characterize an answer Mr. Raab gave on cross-examination as an admission that UGI Electric's incentive payments over-incentivize by design. OCA Init. Br. at 24 (quoting from Tr. at 73-74). The full text of Mr. Raab's answers, however, omitted from the OCA's edited quote, makes clear that *all* prescriptive rebates, including the rebates for CFLs (which program the OCA proposes to double in size) suffer from the same problem:

> The problem, obviously the problem with all of these programs is that you are designing, at least for the residential sector you're designing a program that's easy for customers to understand; you have a fixed level of incentive, and you go about and make the offering.

[16] The OCA incorrectly maintains that natural gas and propane are the only alternatives to electricity for which an incentive is offered for water heating. OCA Init. Br. at 18, n.4. OCA has overlooked the SEF Stipulation to include solar thermal water heating in the Plan.

[17] On this and numerous other of OCA Witness Crandall's proposed Plan modifications, it is worth noting a key professional qualifications difference between Mr. Crandall and Mr. Raab: Mr. Raab creates conservation plans; Mr. Crandall critiques them. As a review of Mr. Crandall's resume reveals, OCA Statement No. 1, Exhibit GCC-1 at 5-15, virtually all of Mr. Crandall's engagements as a witness have involved instances in which he has "assessed" or "reviewed" or "critiqued" the conservation or demand-side management plans constructed and proposed by others. In contrast, Mr. Raab is responsible for actually designing and implementing numerous conservation and DSM programs in numerous jurisdictions around the country. UGI Electric Statement No. 2 at 1-2 and Appendix A at 1-10.

> It is entirely possible that you will run into a situation where you've over-incentivized the customer. I can't say that we won't ...I mean the same thing occurs with lighting, same thing occurs with anybody that might be a free-rider, the same thing occurs in any number of instances. But it certainly could occur here as well ...the key point here, and the one that is the governing factor for all of this is that these are programs that pass the Commission's TRC. And to the extent that they pass the TRC, the incentive level, other than not wanting to over-spend dollars, is what's key here.

Tr. at 73:10-74:11.

In other words, rather than agreeing, as the OCA suggests, that UGI's proposed incentives are too high, Mr. Raab was candidly acknowledging that, for certain customers in certain limited instances the very nature of all prescriptive rebates designed to induce customer behavior is that they may in retrospect turn out to have been unnecessary because the customer would have changed his behavior anyway or was able to take advantage of a generic rebate that reimbursed the customer at a level greater than the level intended. The point, however, is that, given that there is no way to know precisely what incentive amount is required in order to induce a customer to switch, it makes sense to err if at all on the side of giving an incentive that turns out in retrospect to be too large, and then to make a mid-course correction, rather than to provide an incentive of the type proposed by OCA Witness Crandall that likely will turn out in retrospect to be insufficient to induce the customer to switch in the first place. *See* UGI Electric Init. Br. at 39-41; UGI Electric Statement No. 2R at 21:18-23.

c. High Efficiency Devices

The OCA points out that the Commission's May 6, 2011 Tentative Order at Docket No. M-2009-2108601 ("TRC Tentative Order")[18] is in line with the OCA's proposal in this

[18] Implementation of Act 129 of 2008 - Total Resource Cost (TRC) Test, Docket No. M-2009-2108601 (May 6, 2011).

proceeding to require that no incentive payment may be offered unless the alternate fuel equipment selected (*e.g.*, a natural gas furnace) be a "high efficiency" device. OCA Init. Br. at 26 (quoting TRC Tentative Order at 20). UGI Electric acknowledges that in the TRC Tentative Order the Commission proposes, but does not decide, to require a switch to "high efficiency" alternate fuel devices. UGI Electric offers two points in response.

- The TRC Tentative Order is just that – something the Commission is considering to assist Act 129 electric companies as they amend and improve their plans. The Commission has not yet adopted it, and is presently considering comments to the TRC Tentative Order. Given that fact, and given that "high efficiency" water heaters, clothes dryers and gas furnaces are significantly more expensive than their standard efficiency counterparts, the Commission should not at this time, for a fledgling EE&C plan, "raise the bar" on inducing customers to switch from electricity to natural gas or some other alternate fuel by significantly increasing the customer contribution, but rather should approve the program as filed and consider an amendment to UGI Electric's Plan, if and when the Commission adopts the TRC Tentative Order; and

- In the event the Commission decides to amend UGI Electric's Plan to require "high efficiency" alternate fuel equipment as proposed by the OCA, the Commission certainly should reject the OCA's proposed reduction to incentive payments, because the higher cost of high efficiency equipment, coupled with a dramatically lower incentive payment, surely will jeopardize the fuel switching component of the Plan. *See* UGI Electric Init. Br. at 42-43; UGI Electric Statement No. 2RJ at 13:17-21.

d. Load Building

Finally, OCA and OTS remain perplexingly hostile to UGI Electric's inclusion of fuel substitution programs in the Plan. OCA Init. Br. at 18; OTS Init. Br. at 26-30. OCA, for example, worries that UGI Electric's programs are designed to "build load for UGI-Electric's natural gas and propane affiliates at UGI-Electric ratepayers' expense." OCA Init. Br. at 19. As set forth at length above, however, *see supra* at 19-21, there is no principled basis for this resistance to fuel switching, and there is no factual support for the OCA's "load building" fear. PNG, UGI Electric's affiliated NGDC, may experience a *de minimus* increase in load and

revenues. There is no legitimate expectation that either Amerigas or UGIES will experience any measurable increase in either. In short, the OCA's "load building" accusation, and the OTS' related "triple dip" theory, are little more than unsupported slogans designed to defeat UGI Electric's carefully conceived and balanced Plan, which includes fuel switching programs as an integral but modest component. If implemented, the fuel switching programs will be substantial contributors to the Plan's overall success in terms of "deemed savings," and they will not monopolize the Plan's budget.

3. Inclusion of Peak Load Reduction Targets

As anticipated in UGI Electric's Initial Brief, UGI Electric Init. Br. at 44-45, OTS argues that the Commission should require UGI Electric to modify its Plan to add specific programs to reduce peak load demand for the 100 hours of highest electricity demand. OTS Init. Br. at 30-32. There is no basis for OTS' proposed modification, and UGI Electric rests on its Initial Brief on this issue. Neither the OCA nor the OSBA take a position on the issue.

4. Reduction in Total Plan Expenditure Levels

UGI Electric has proposed a Plan budget that is slightly more than, but substantially consistent with, Act 129's 2% cap on expenditures. UGI Electric Init. Br. at 45-46. In testimony, the OSBA proposed that the Commission limit the Plan budget to 2%, OSBA Statement No. 1 at 9:2-3, whereas the OTS proposed to slash expenditures to 1.2% of revenues. OTS Statement No. 1 at 24:5-8. OCA Witness Crandall took no position on the issue.

In the Initial Briefs, it appears that the OSBA has abandoned its recommendation to reduce Plan expenditures to a strict 2%, OSBA Init. Br. at 16 ("The OSBA takes no position on this issue"), but the OCA has now adopted the OSBA position ("The OCA concurs with the

OSBA Witness Knecht's recommendation."). OCA Init. Br. at 29. OTS, for its part, argues consistent with its testimony that Plan expenditures should be reduced to 1.2% of revenues.

UGI Electric rests on its Initial Brief for its response to OTS' arbitrary methodology for calculating a dramatic decrease in Plan expenditures. UGI Electric Init. Br. at 46.

With respect to the OCA's unexpected conversion to the OSBA's now-abandoned position, UGI Electric merely points out that nothing in the Secretarial Letter imposes a strict 2% cap on Plan expenditures; rather, the Commission prescribes a flexible approach: "Again, while the cost limits contained in Act 129 are not applicable to a voluntary EE&C plan, an EDC submitting such a plan must justify the level of expenditures it proposes whether they meet the Act 129 cost limits or not." Secretarial Letter at 2. As detailed elsewhere in UGI Electric's Initial Brief and in this Response Brief, UGI Electric has justified fully the level of expenditures it proposes under the Plan. The level of expenditures in excess of 2% it proposes relates almost entirely to expenses that the Company will incur to deliver to customers the programs it has designed. As Mr. Raab explained on cross examination, it is critical, especially for a smaller EDC, to allow for sufficient administrative costs to administer the plan and a sufficient number of programs within the plan to be able to fully utilize the costs of administration and achieve the necessary scope and scale:

> So, for example, the Company's level of administrative costs, this 300,000, that's based on the hiring of people. Well, people can obviously administer one program or ten programs. And I believe that was Chairman Powelson's point, as I interpret what he said [in his statement accompanying the Secretarial Letter] is you're going to have to hire, let's say, some person to administer these programs. And that's going to - - you're going to incur costs for that. And all I'm suggesting is that you need a broad enough base of programs to generate enough benefits to support the costs you've incurred for that individual. And I think that's all Chairman Powelson was saying, that you're going to have - - and smaller

> EDCs may not be able to offer enough programs to generate enough benefits to support even one individual. And I think that's what he was saying.

Tr. at 55:6-22. In other words, the difference between 2% of revenues for larger EDCs and the 2.3% proposed by UGI Electric is approximately $300,000 in administrative costs that are needed in order to optimize utilization of administrative resources and place into effect sufficient programs to generate sufficient savings. UGI Electric has done that through its carefully balanced Plan. OCA has not offered any credible basis for upsetting that balance.

5. Recovery of Plan Costs by Customer Class

As the Initial Briefs of the parties reveal, there no longer is any controversy on this issue. UGI Electric initially proposed to recover Plan costs from two customer classes, a single residential class and a single non-residential class. UGI Electric Statement No. 3 at 8:12-21. In response to testimony from the OSBA, UGI Electric has agreed to modify the Plan to divide the non-residential class into two groups as proposed by the OSBA. UGI Electric Statement No. 3R at 10:9-18. UGI Electric urges that Your Honor and the Commission adopt this modification agreed to by all parties.

6. Expansion or Modification of Customer Education

The OCA requests that the Commission "direct UGI Electric to develop an energy efficiency education program" that emphasizes "the energy consumption of home entertainment systems, TV's and phantom power loads." OCA Init. Br. at 31-32. As there is nothing new in the OCA's advocacy on this issue, UGI Electric rests on its Initial Brief, UGI Electric Init. Br. at 47, with one additional point. Although UGI Electric for the most part disagrees with the Plan modifications proposed by Mr. Crandall in testimony, at least Mr. Crandall did not propose in his testimony to expand Plan expenditures through new programs while at the same time

recommending that the Plan budget be cut. The OCA now seeks both in its Initial Brief. The position is neither principled nor supported.

Neither the OTS nor the OSBA take a position on this issue.

7. Funding Percentage for Residential Lighting

The OCA proposes to double UGI Electric's proposed CFL Program. OCA Init. Br. at 32-33. As with the customer education issue, UGI Electric rests on its Initial Brief in opposition to the OCA's position, UGI Electric Init. Br. at 47-49, but with the same caveat: OCA's new proposal to expand the Plan programs while simultaneously cutting the Plan budget is neither principled nor supported, and should be rejected.

Again, neither the OTS nor the OSBA take a position on this issue.

8. Modification to Commercial Lighting

UGI Electric's Custom Incentive Program for Commercial and Industrial customers allows businesses to propose the mix of energy efficiency measures, including lighting, that best fits their needs. UGI Electric Exhibit No. 1 at 42-49. The OCA seeks to remove that choice and replace it with a set of (as yet undefined) prescriptive rebates. OCA Init. Br. at 33 ("OCA Witness Crandall recommended that, rather than employ a custom approach to setting the incentives (rebates) for commercial lighting upgrades, the Company should adopt "prescriptive rebates").

UGI Electric rests on its Initial Brief on this issue. UGI Electric Init. Br. at 49-50. UGI Electric believes that the customers, and in particular commercial and industrial customers, are better equipped than the Company to make determinations as to which technologies best meet each customer's needs individually. UGI Electric Statement No. 2R at 8:24-27.

The OTS took no position on this issue. The OSBA, which represents the interests of commercials, made no such recommendation of its own, but "does not oppose" the OCA's recommendations. OSBA Init. Br. at 19. There is simply no basis for denying customers a choice, especially where, as here, the OCA has not even specified the prescriptive measures it would put in place.

9. Notice Period for Change in Plan Rider Charges

As the Initial Briefs of the parties reveal, there is no longer any controversy on this issue. In response to notice concerns voiced by the OCA, UGI Electric agreed to provide 30-days' notice of any adjustments, either upward or downward, for both the EE&C Rider and the CD Rider. UGI Electric Statement No. 3R at 10:5-7. In its Initial Brief, the OCA correctly notes that it and the Company have reached accord on the issue, that no other parties have commented on it, and requests the Commission to order that changes to either Rider be effective upon a minimum of 30-days' notice. OCA Init. Br. at 36. UGI Electric concurs.

10. Necessity for Prudence Review of Plan

OSBA proposes that, because UGI Electric as a smaller EDC is not subject to the mandatory targets and penalties that Act 129 imposes, the Commission should either allow the OSBA's constituents to "opt out" of the Plan[19] or direct UGI Electric to implement an *ex post* prudence review of costs that would put UGI Electric at risk of a disallowance of costs incurred in administering the Plan. OSBA Init. Br. at 20-23. For all of the reasons set forth in its Initial Brief, which anticipates and rebuts OSBA's arguments on this point, the Commission should reject OSBA's proposal. UGI Electric Init. Br. at 51-52. UGI Electric is proposing a voluntary Plan consistent with the Commission's Secretarial Letter in a sincere effort to reduce energy

[19] This issue is discussed below as "11. Applicability of the Plan to Small Business Customers."

consumption. There is no legal or policy basis for subjecting UGI Electric to a punitive prudence review.

Neither the OTS nor the OCA takes a position on this issue.

11. Applicability of the Plan to Small Business Customers

As anticipated in UGI Electric's Initial Brief, UGI Electric Init. Br. at 52-53, OSBA argues that commercial and industrial customers should be permitted to essentially "opt out" of the EE&C Plan by setting the non-residential EE&C Rider charges[20] to zero, and allowing any commercial or industrial UGI Electric customer to install and pay for whatever conservation measures it chooses. For the reasons set forth in UGI Electric's Initial Brief, OSBA's position on this issue is inconsistent with the entire concept of EE&C plans as envisioned by the Commission's Secretarial Letter. UGI Electric rests on its Initial Brief on this issue.

Neither the OCA nor the OTS takes a position on this issue.

12. Expansion to Include Solar Thermal and/or Other Tier I Resources

As the Initial Briefs of the parties reveal, there is no longer any controversy on this issue. In response to SEF testimony, which provided the necessary TRC calculations to demonstrate the cost-effectiveness of solar thermal water heating, UGI Electric entered into a Stipulation with SEF agreeing to adopt solar thermal water heating as a technology to be recognized and incentivized under the Plan. All parties either agree to or do not object to this addition to the Plan. Accordingly, UGI Electric urges the Commission to adopt this modification to the Plan.

[20] Under the Plan, as amended in response to the OSBA's alternative proposal, there would be two non-residential classes, and thus two separate EE&C charges associated with non-residential customers. In addition, UGI Electric obviously is proposing that non-residential customers also pay the CD Rider charge or, in the alternative, that they ultimately be allocated responsibility for the lost revenue regulatory asset.

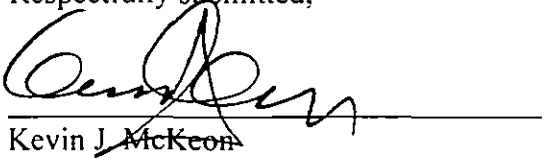
13. Other Modifications

The OCA recommends that UGI Electric participate in PJM Demand Response Bidding Auctions, to the extent they are available and cost-effective, and use resulting financial payments to reduce the level of revenue needed to operate the EE&C Plan programs. OCA Init. Br. at 37. As the OCA accurately notes, UGI Electric Witness Raab stated in rebuttal testimony that he saw no reason why the Company would not do so. *Id.* Accordingly, UGI Electric would not object if the Commission were to direct UGI Electric to investigate the feasibility of utilizing any energy efficiency savings and demand response reductions that result from the Plan's programs to bid into PJM's market auctions, and to use any revenue received from the auctions as an offset to the costs of the Plan recovered through the EE&C Rider.

V. CONCLUSION

UGI Electric respectfully requests that the Commission approve the Plan as filed, amended to reflect: (1) The addition of solar thermal water heating as per the SEF Stipulation; (2) The revised 30-day notice provision; (3) The revised classes for the EE&C Rider as well as CD Rider for lost revenue; and (4) if the Commission so directs, and if feasible, use of any PJM-generated financial incentives as an offset to Plan expenses.

Respectfully submitted,



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Dated: June 14, 2011

Counsel for UGI Utilities, Inc., Electric Division

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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