
Garrett P. Lent

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File #: 181941

September 16, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: PA Public Utility Commission v. UGI Utilities, Inc. - Electric Division
Docket Nos. R-2021-3023618, et al.**

Dear Secretary Chiavetta:

UGI Utilities, Inc. – Electric Division (“UGI Electric” or the “Company”) hereby files this letter in reply to the late-filed Exceptions of Ms. Brandi Brace, in the above-captioned proceeding. On August 27, 2021, the Pennsylvania Public Utility Commission (“Commission”) issued a Secretarial Letter and a Recommended Decision in this proceeding (both of which were dated August 27, 2021). The August 27, 2021 Secretarial Letter stated that Exceptions to the Recommended Decision needed to be filed within 10 days of the date of the letter or by September 7, 2021 (“Exception Deadline”). UGI Electric further notes Ms. Brace was an active party to this proceeding and was served with all documents, including the Recommended Decision and associated Secretarial Letter. The August 27, 2021 Secretarial Letter clearly states: “Your signed Exceptions to the decision, if any, must be: 1) **filed** with the Secretary of the Commission, **and** 2) **within ten (10) days** of the date of this letter.” Secretarial Letter at 1 (emphasis in original). Reply Exceptions were to be filed 7 days after the Exception Deadline or by September 14, 2021 (“Reply Exceptions Deadline”).

The Company notes that Ms. Brace filed her Exceptions on September 14, 2021, seven days after the Exceptions Deadline (i.e., September 7, 2021) that was established in the August 27, 2021 Secretarial Letter issuing the Recommended Decision in this proceeding. Ms. Brace further admits in the certificate of service accompanying her Exceptions that it “was brought to my attention that the time to submit exceptions was lowered to 10 days.” Ms. Brace also specifically overlooks the plain language of Section 5.533(a) of the Commission’s regulations, which states “In a proceeding, exceptions may be filed by a party and served within 20 days after the initial,

tentative or recommended decision is issued *unless some other exception period is provided.*" 52 Pa. Code § 5.533(a) (emphasis added). As noted above, the Secretarial Letter clearly provided for a ten (10) day exceptions period in accordance with Section 5.522(a).

UGI Electric submits that the Commission should deny the Exceptions as untimely.¹ By failing to timely file her Exceptions, Ms. Brace has also deprived UGI Electric of the opportunity to timely file Replies to Exceptions by the Reply Exceptions Deadline. Ms. Brace filed her Exceptions on the Reply Exceptions Deadline. As a result, the Company and other parties are fully deprived of the opportunity to file Replies to Exceptions without some further administrative relief.

Not only are Ms. Brace's Exceptions untimely, they also lack substantive merit. Her first exception disregards the fact that Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. Settlements, in general, reflect concessions on the part of the active parties after a thorough investigation of the utility's claims. In this case, that process included voluminous discovery and multiple rounds of testimony. Furthermore, while Ms. Brace objects to the "black box" nature of the settlement of revenue requirement in this proceeding, the Commission encourages black box settlements. *See, e.g., Pa. PUC v. Aqua Pa., Inc.*, Docket No. R-2011-2267958, pp. 26-27 (Order entered June 7, 2012); *Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886, pp. 27-28 (Order entered Dec. 19, 2013); Statement of Chairman Robert F. Powelson, Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (Public Meeting, Aug. 2, 2012).

Ms. Brace's second untimely Exception, which generally claims that the Settlement is not in the public interest, does not consider the fact that the Parties to the Settlement represent a diversity of constituents and interests all of which were served by the outcome in this proceeding (as detailed in each Party's Statement in Support of the Settlement). In addition, her reliance upon Section 508 of the Public Utility Code, 66 Pa.C.S. § 508, is inapposite. Section 508 of the Public Utility Code sets forth the Commission's authority to revise public utility contracts; it does not limit or define the consideration of the public interest in a general base rate proceeding.

In addition, Ms. Brace's third untimely Exception, regarding the reasonableness of rates in this proceeding, continues to focus upon UGI Electric's corporate parent, *i.e.*, UGI Corporation. UGI Electric, not its parent, is the material entity and public utility for purposes of this proceeding. Moreover, the Recommended Decision appropriately determined that the rates agreed upon in the Settlement are reasonable in amount and allocation to customers.

¹ *See, e.g., Salwa Mohamed and Ahmed Abdulrahman v. PECO Energy Company*, Docket No. F-2018-3001318, 2019 Pa. PUC LEXIS 286, at *14 (Order entered Aug. 29, 2019) (denying arguments raised for the first time in reply exceptions because a "request to reverse the ALJ's decision is untimely as Exceptions are due within twenty days after the Initial Decision. 52 Pa. Code § 5.533(a)."); *Cheryl Nickelberry v. Philadelphia Elec. Co.*, Docket No. F-8642641, 1987 Pa. PUC LEXIS 249, at *3 (Order entered Jun. 29, 1987) ("*Nickelberry*") ("In reviewing untimely exceptions, we have followed the Commonwealth Court of Pennsylvania's opinion in *Walker v. Unemployment Compensation Board of Review*, 461 A.2d 346, 347 (Pa. Cmwlth. 1983). The Court wrote, 'An untimely appeal may be allowed where the untimeliness is not the result of the negligence of the appellant.'").

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Ms. Brace's fourth Exception regarding the application of the rate increase to monthly customer distribution charges makes no recognition as to the reasonableness of the settled rates in this proceeding. As explained in its Statement in Support, the Company's initially proposed Rate R customer charge was supported by thorough and substantial evidence, but the Settlement reaches a reasonable compromise of the Parties' competing litigation positions regarding increases to the proposed monthly charges.

Ms. Brace's fifth Exception ignores the plain language of the Commission's May 30, 2020 Secretarial Letter (regarding COVID-19 costs). It also ignores that the Settlement itself established both (1) the applicable period through which incremental uncollectibles expense (associated with the COVID-19 pandemic) would be recovered (i.e., September 30, 2020) and (2) a three-year amortization period for the Company to recover those costs. As explained in UGI Electric's Statement in Support, this provision constitutes a reasonable compromise of the Parties' positions and is supported by evidence of record.

Finally, Ms. Brace's sixth Exception ignores the substantial benefits that the battery storage proposal, as modified by the Settlement, will provide to UGI Electric's customers. Indeed, the Settlement enables the Company to address the unique reliability and resiliency issues being experienced on the impacted circuit through the installation and rate base recovery of the battery storage system at the lowest cost to customers, while avoiding the issues raised by the other parties regarding participation in the PJM Frequency Regulation Market.

Therefore, while Ms. Brace's Exceptions should not receive consideration as a result of the late-filed status of these Exceptions, the Company believes the Commission should nonetheless deny Ms. Brace's Exceptions for the clear reasons set forth above, as well as the reasons set forth in the Company's Statement in Support of Settlement and the Recommended Decision, which are based on the robust record of evidence in this proceeding showing that the settlement is appropriate and in the public interest.

Please direct any questions regarding this letter to the undersigned counsel. Copies will be provided as set forth in the attached certificate of service.

Respectfully submitted,



Garrett P. Lent

GPL/dmc
Attachements

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cc: Honorable Steven K. Haas (*via e-mail only*)
Office of Special Assistant (*via e-mail only*)
Certificate of Service

CERTIFICATE OF SERVICE

(Docket Nos. R-2021-3023618, et al.)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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