



COMMONWEALTH OF PENNSYLVANIA

April 20, 2016

**E-FILED**

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

**Re: Petition of UGI Penn Natural Gas, Inc. for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues  
Docket No. P-2016-2537594**

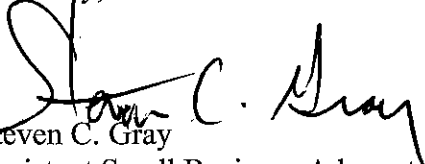
Dear Secretary Chiavetta:

I am delivering for filing today the Answer, Public Statement, Notice of Intervention, and Verification, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538

*Enclosures*

cc: The Honorable Charles E. Rainey, Jr.  
Parties of Record  
Robert D. Knecht

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of UGI Penn Natural Gas, Inc. :**  
**for a Waiver of the Distribution System :**  
**Improvement Charge Cap of 5% of :**  
**Billed Distribution Revenues and :**       **Docket No. P-2016-2537594**  
**Approval to Increase the Maximum :**  
**Allowable DSIC to 10% of Billed :**  
**Distribution Revenues :**

**ANSWER OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

On March 31, 2016, UGI Penn Natural Gas, Inc. (“UGI PNG” or the “Company”) filed a Petition for a Waiver of the Distribution System Improvement Charge (“DSIC”) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues (“*Petition*”) with the Pennsylvania Public Utility Commission (“Commission”).

Section 1358(a)(1) of the Public Utility Code, 66 Pa. C.S. § 1358(a)(1), states:

Except as provided under paragraph (2), the distribution system improvement charge may not exceed 5% of the amount billed to customers under the applicable rates of the wastewater utility or distribution rates of the electric distribution company, natural gas distribution company or city natural gas distribution operation. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

66 Pa. C.S. § 1358(a)(1). Section 1358 is entitled “Customer protections.” Paragraph (a) is entitled “Limitations.”

Pursuant to 52 Pa. Code § 5.61(a), the Office of Small Business Advocate (“OSBA”) submits this Answer to the *Petition*.

**Responses to the *Petition*’s Numbered Paragraphs**

## Introduction

1. Admitted, except for those averments of Paragraph 1 which contain conclusions of law to which no response is required. By way of further response, 66 Pa. C.S. § 102 speaks for itself.

2. Admitted, except for those averments of Paragraph 2 which contain conclusions of law to which no response is required. By way of further response, the August 18, 2006, Commission Order cited by the Company in Paragraph 2 speaks for itself.

3. Admitted.

4. The averments of Paragraph 4 contain conclusions of law to which no response is required. By way of further response, Act 11 of 2012 (“Act 11”) speaks for itself.

5. The averments of Paragraph 5 contain conclusions of law to which no response is required. By way of further response, Sections 1351 and 1352 of the Public Utility Code, 66 Pa. C.S. §§ 1351 and 1352, speak for themselves.

6. The averments of Paragraph 6 contain conclusions of law to which no response is required. By way of further response, the Commission’s August 2, 2012, Final Implementation Order cited by the Company in Paragraph 6, and Section 1353 of the Public Utility Code, 66 Pa. C.S. §§ 1353, speak for themselves.

7. The averments of Paragraph 7 are admitted in part, except for those averments of Paragraph 7 which are conclusions of law to which no response is required. By way of further response, the Company’s December 12, 2013, DSIC Petition, the Commission’s September 11, 2014, Order, and the Commission’s July 8, 2015, Order, all cited by the Company in Paragraph 7, speak for themselves.

8. The averments of Paragraph 8 are admitted in part, except for those averments of Paragraph 8 which are conclusions of law to which no response is required. By way of further response, the Commission's September 11, 2014, and Exhibit WJM-1 to the *Petition* speak for themselves.

9. The averments of Paragraph 9 are admitted in part, except for those averments of Paragraph 9 which are conclusions of law to which no response is required. By way of further response, Section 1356 of the Public Utility Code, 66 Pa. C.S. § 1356, and Exhibit WJM-4 to the *Petition*, speak for themselves.

10. The averments of Paragraph 10 are admitted in part, except for those averments which are requests for relief or conclusions of law to which no response is required. By way of further response, the OSBA admits that the Company filed a Modified LTIP on February 29, 2016. That LTIP, and 52 Pa. Code § 121.5(a), speak for themselves.

11. The averments of Paragraph 11 are requests for relief or conclusions of law to which no response is required. By way of further response, Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, speaks for itself.

An Increase in the DSIC is Proper and in the Public Interest

12. The averments of Paragraph 12 contain conclusions of law to which no response is required. By way of further response, Sections 1358(a)(1) of the Public Utility Code, 66 Pa. C.S. § 1358(a)(1), speaks for itself.

13. Admitted in part. The OSBA admits that there is a document titled "UGI Statement No. 1" attached to the *Petition*. The remaining averments of Paragraph 13 are denied, and strict proof thereof is demanded. By way of further response, "UGI Statement No. 1" and the included Exhibits speak for themselves.

14. The averments of Paragraph 14 begin with a summary of the Company's request for relief to which no response is required. The Company further avers that "the revenue provided by the DSIC with a 5% cap is not sufficient for UGI-PNG to maintain its level of investment in its DSIC-eligible distribution infrastructure." UGI PNG then avers that the Company has already exceeded its 5% DSIC cap. UGI PNG concludes that even with the requested 10% DSIC cap, the Company will "exceed [that] DSIC cap well before the end of the current LTIP period." These averments are denied, and strict proof thereof is demanded. To the extent that Paragraph 14 implies that UGI PNG is not be able to deliver safe and reliable service to its customers as required by 66 Pa. C.S. § 1501, the averment is also denied, and strict proof thereof is demanded. By way of further response, the 5 percent cap on DSIC in Act 11 is a basic consumer protection that the Company proposes to eviscerate. Act 11 only permits a waiver of the DSIC cap if the Company is otherwise unable to "ensure and maintain adequate, efficient, safe, reliable and reasonable service." UGI PNG has alternatives to its proposed increase in the DSIC cap, including, but not limited to, filing for a general rate increase under 66 Pa. C.S. § 1308. As the Company offers no reason why it cannot meet its obligations without a waiver, and alternatives are available, the OSBA respectfully submits that the *Petition* should be summarily dismissed. In the alternative, if the Commission determines that the specific dollar amounts being incurred by the Company are somehow relevant to the legal requirements for a waiver set forth in the legislation, the OSBA respectfully requests that the *Petition* be subject to evidentiary hearings before an ALJ so that these issues can be examined in detail.

15. The averments of Paragraph 15 are requests for relief or conclusions of law to which no response is required. By way of further response, the vague averments in Paragraph 15 that "[t]his work is critical to the continued provision of safe and reliable service" fails to

recognize that UGI PNG has alternatives for funding this work that do not require a waiver of the basic consumer protections in Act 11. The OSBA therefore respectfully submits that the *Petition* should be summarily dismissed. In the alternative, if the Commission determines that the magnitude of costs being incurred by the Company is somehow relevant to the statutory requirements for a waiver, the OSBA respectfully requests that the *Petition* be subject to evidentiary hearings before an ALJ so that these averments of Paragraph 15 can be examined in detail.

16. The averments of Paragraph 16 are denied, and strict proof is demanded thereof. By way of further response, UGI PNG is never “limited in its ability to recover its investment,” as long as the Company can demonstrate that its investments are prudent. To the extent that the Company is claiming that it is unable to recover all prudently incurred costs because it has not timely filed for a general rate increase under 66 Pa. C.S. § 1308, the OSBA respectfully submits that this was a management decision by the Company and not a reason for a waiver of the basic consumer protections in Act 11. The OSBA therefore respectfully submits that the *Petition* should be summarily dismissed. In the alternative, if the Commission determines that the Company’s failure to timely file an application for a general rate increase is somehow relevant to the statutory requirement for granting a waiver of the DSIC cap, the OSBA respectfully requests that the *Petition* be subject to evidentiary hearings before an ALJ so that these averments of Paragraph 16 can be examined in detail.

17. The averments of Paragraph 17 are denied, and strict proof is demanded thereof. By way of further response, UGI PNG should not be heard when it avers that the Company will be required to forego “\$7.8 million worth of revenue associated with DSIC-eligible plant.” UGI PNG itself fully acknowledges in Paragraph 17 that this hypothetical “loss” can be recovered by

filing for a general rate increase under 66 Pa. C.S. § 1308. To the extent that the Company is claiming that it is unable to recover all prudently incurred costs because it has not timely filed for a general rate increase under 66 Pa. C.S. § 1308, the OSBA respectfully submits that this was a management decision by the Company and not a reason for a waiver of the basic consumer protections in Act 11. The OSBA therefore respectfully submits that the *Petition* should be summarily dismissed. In the alternative, if the Commission determines that the Company's failure to timely file an application for a general rate increase is somehow relevant to the statutory requirement for granting a waiver of the DSIC cap, the OSBA respectfully requests that the *Petition* be subject to evidentiary hearings before an ALJ so that these averments of Paragraph 17 can be examined in detail.

18. The averments of Paragraph 18 are denied, and strict proof is demanded thereof. By way of further response, the Company appears to aver that the impact of the requested waiver would be relatively modest compared to the alleged benefits, which are not quantified. The OSBA respectfully submits that, in adopting Act 11, the legislature made a determination as to the maximum reasonable rate increase that should be allowed for an automatic DSIC mechanism, and it set that level at 5 percent. The relevant issue is therefore not the impact of the waiver, but the overall impact of the automatic DSIC mechanism, a limit which has been established by law. Moreover, the legislation does not permit a waiver of basic consumer protections on the grounds of minimal impact, but only on the grounds that it is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." As the customer impact is legally irrelevant, the OSBA respectfully submits that the *Petition* should be summarily dismissed. In the alternative, if the Commission determines that the customer impact of the waiver is somehow relevant to the statutory requirement for granting a waiver of the DSIC cap, the OSBA respectfully requests that

the *Petition* be subject to evidentiary hearings before an ALJ so that these averments of Paragraph 18 can be examined in detail.

19. The averments of Paragraph 19 are denied, and strict proof is demanded thereof. By way of further response, the Company recognizes that it does indeed have at least one alternative to a waiver of basic consumer protections, namely the filing of a general rate application. Since the Company implicitly admits that it can meet its obligation to provide adequate, efficient, safe, reliable and reasonable service without a waiver of basic consumer protections, and because Act 11 does not specify that reducing costs associated with base rates proceedings represents grounds for a waiver, the OSBA respectfully requests that the *Petition* be summarily dismissed. In the alternative, if the Commission determines that avoiding base rates costs is somehow relevant to the statutory requirement for granting a waiver of the DSIC cap, the OSBA respectfully requests that the *Petition* be subject to evidentiary hearings before an ALJ so that these averments of Paragraph 19 can be examined in detail.

20. The averments of Paragraph 20 are denied, and strict proof is demanded thereof. By way of further response, the OSBA opposes UGI PNG's request for expedited treatment of the *Petition*, except to the extent it is summarily dismissed. UGI PNG's claim that it will be unable to recover expenditures in 2016 is a red herring, as UGI PNG has previously acknowledged that it may avail itself of 66 Pa. C.S. § 1308. To the extent that the Company is claiming that it is unable to recover all prudently incurred costs because it has not timely filed for a general rate increase under 66 Pa. C.S. § 1308, the OSBA respectfully submits that this was a management decision by the Company and not a reason for a waiver of the basic consumer protections in Act 11. Furthermore, Section 1358(a)(1) is designed to provide *consumer protection*, not a license for UGI PNG to demand millions of dollars on an expedited basis. The



OSBA observes that the *Petition* raises many unresolved questions about UGI PNG's maintenance of its infrastructure, its expenditures for repair, its engineering competence, and the competence of the Company itself. The expedited relief requested by the *Petition* is not similar to a telecommunications company submitting an annual Price Stability Index/Service Price Index ("PSI/SPI") filing in accordance with an Amended Network Modernization Plan ("Amended NMP"). If the OSBA were to file a complaint against such a PSI/SPI filing, the Commission would normally put the rate changes into effect subject to refund once the litigation is concluded. That is a rational course of action because an Amended NMP sets forth all of the details and mathematical calculations required by the PSI/SPI filing. In contrast, the UGI PNG *Petition* raises a multitude of issues that will require discovery, expert witness testimony, and evidentiary hearings, if the Commission determines that these issues have any relevance to the statutory requirements for the requested waiver. Moreover, there is no applicable statutory language upon which UGI PNG can rely in order to be granted expedited treatment of its *Petition*. Therefore, the OSBA respectfully requests that the *Petition* be summarily dismissed. In the alternative, the OSBA requests that expedited treatment be denied in this proceeding.

21. The averments of Paragraph 21 are requests for relief or conclusions of law to which no response is required. By way of further response, UGI PNG states a critical distinction in Paragraph 21. If, *arguendo*, the Commission has allowed utilities to implement DSIC mechanisms subject to refund, the key word is "implement." In this proceeding, UGI PNG is not asking to *implement* a DSIC, it is asking the Commission to increase the Company's current DSIC cap by 100%. Expedited treatment for such a massive rate increase is not, in any way, appropriate in this proceeding, except to the extent that the *Petition* is summarily dismissed.

22. The averments of Paragraph 22 contain summaries of the Company's request for relief to which no response is required.

Consumer Notice

23. Admitted in part. The OSBA has no knowledge of service on the Office of Consumer Advocate or on the Commission's Bureau of Investigation and Enforcement.

24. The averments of Paragraph 24 are denied, and strict proof is demanded thereof.

25. The averments of Paragraph 25 contain summaries of the Company's request for relief to which no response is required.

26. The averments of Paragraph 26 contain summaries of the Company's request for relief to which no response is required.

**Conclusion**

In view of the foregoing, the Office of Small Business Advocate respectfully requests that the Pennsylvania Public Utility Commission:

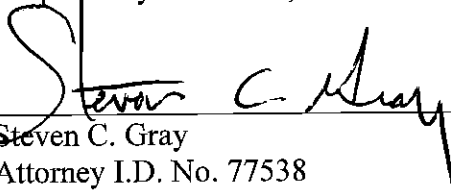
A. Summarily dismiss the *Petition*, because it fails to provide any evidence that the Company requires a waiver of the DSIC cap “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service,” as required in 66 Pa. C.S. § 1358(a)(1).

In the alternative, the Office of Small Business Advocate respectfully requests that the Pennsylvania Public Utility Commission:

B. Direct the Office of Administrative Law Judge to hold hearings on the *Petition* and prepare an initial decision; and

C. Grant such other relief as may be necessary or appropriate.

Respectfully submitted,



Steven C. Gray  
Attorney I.D. No. 77538  
Assistant Small Business Advocate

For:  
John R. Evans  
Small Business Advocate

Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831

Dated: April 20, 2016

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of UGI Penn Natural Gas, Inc. :**  
**for a Waiver of the Distribution System :**  
**Improvement Charge Cap of 5% of :**  
**Billed Distribution Revenues and :**       **Docket No. P-2016-2537594**  
**Approval to Increase the Maximum :**  
**Allowable DSIC to 10% of Billed :**  
**Distribution Revenues :**

**PUBLIC STATEMENT OF  
THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (the "Act"). The Act further provides that the Small Business Advocate is to issue publicly a written statement stating concisely the specific interest of small business consumers to be protected by his initiation of or intervention in any proceeding involving those interests before the Public Utility Commission ("Commission") or any other agency or court. This public statement relates to the filing today by the Small Business Advocate of an Answer and Notice of Intervention in the above-captioned Commission proceeding.

On March 31, 2016, UGI Penn Natural Gas, Inc. ("UGI PNG" or the "Company") filed a Petition for a Waiver of the Distribution System Improvement Charge ("DSIC") Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues ("Petition") with the Commission.

The Small Business Advocate is intervening in this proceeding in order to protect the interests of the Company's small business customers.

In view of the foregoing, the Small Business Advocate is requesting that the Petition be summarily dismissed by the Commission. UGI PNG has not demonstrated any need for such an extreme increase in its DSIC.

Dated: April 20, 2016

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of UGI Penn Natural Gas, Inc.** :  
**for a Waiver of the Distribution System** :  
**Improvement Charge Cap of 5% of** :  
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**Approval to Increase the Maximum** :  
**Allowable DSIC to 10% of Billed** :  
**Distribution Revenues** :

**NOTICE OF INTERVENTION  
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

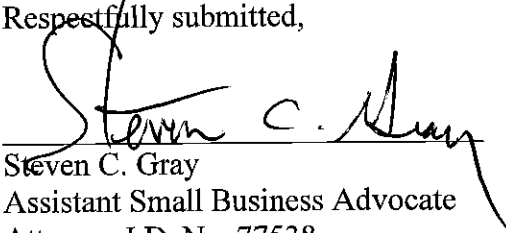
The Office of Small Business Advocate (“OSBA”) files this Notice of Intervention with respect to the Petition of UGI Penn Natural Gas, Inc. (“UGI PNG” or the “Company”) for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues (“Petition”) that was filed with the Pennsylvania Public Utility Commission (“Commission”) on March 31, 2016. In support of this Notice of Intervention, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission.

2. Representing the OSBA in this proceeding is:

Steven C. Gray, Esquire  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, Pennsylvania 17101  
(717) 783-2525  
(717) 783-2831 (fax)  
[sgray@pa.gov](mailto:sgray@pa.gov)

Respectfully submitted,



Steven C. Gray  
Assistant Small Business Advocate  
Attorney I.D. No. 77538

For:  
John R. Evans  
Small Business Advocate

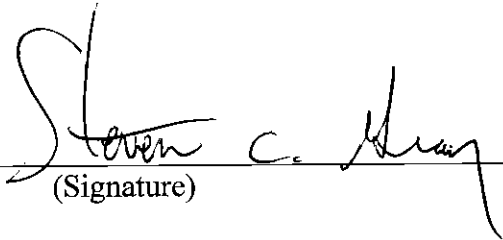
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
(717) 783-2525

Date: April 20 2016

**VERIFICATION**

I, Steven C. Gray, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: April 20, 2016

  
\_\_\_\_\_  
(Signature)



**BEFORE THE  
PUBLIC UTILITY COMMISSION**

**Petition of UGI Penn Natural Gas, Inc. :**  
**for a Waiver of the Distribution System :**  
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**Allowable DSIC to 10% of Billed :**  
**Distribution Revenues :**

**CERTIFICATE OF SERVICE**

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).

The Honorable Charles E. Rainey, Jr.  
Chief Administrative Law Judge  
Pennsylvania Public Utility Commission  
400 North Street  
Commonwealth Keystone Bldg., 2<sup>nd</sup> Fl. West  
Harrisburg, PA 17120  
[crainey@pa.gov](mailto:crainey@pa.gov)  
**(Email and Hand Delivery)**

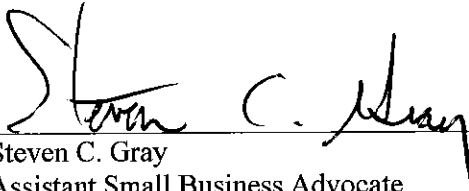
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**(Email and US Mail)**

Date: April 20, 2016

  
Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538