

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 20, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 171020

Re: Petition of UGI Central Penn 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 Revenues
Docket No. P-2016-2537609

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487

Attachment

cc: Office of Administrative Law Judge
Certificate of Service
219748

CERTIFICATE OF SERVICE

Petition of UGI Central Penn Gas, Inc. for :
a Waiver of the Distribution System Improvement :
Charge Cap of 5% of Billed Distribution : Docket No. P-2016-2537609
Revenues and Approval to Increase the Maximum :
Allowable DSIC to 10% of Billed Revenues :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 20th day of April 2016.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of UGI Central Penn Gas, Inc. for :
a Waiver of the Distribution System Improvement :
Charge Cap of 5% of Billed Distribution : Docket No. P-2016-2537609
Revenues and Approval to Increase the Maximum :
Allowable DSIC to 10% of Billed Revenues :

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE PETITION OF UGI CENTRAL PENN GAS, INC.

Pursuant to Section 5.61 of the Pennsylvania Code, 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of UGI Central Penn Gas, Inc. in the above-captioned proceeding.

I. UGI-CPG Should Not Be Permitted to Increase its DSIC Cap to 10%.

On March 31, 2016, UGI Central Penn Gas, Inc. (UGI-CPG or the Company) filed the above-captioned Petition. Through its Petition, UGI-CPG seeks approval from the Pennsylvania Public Utility Commission (Commission) to increase the maximum allowable Distribution System Improvement Charge (DSIC) from 5% to 10%. Petition at 5.

Governor Corbett signed Act 11 of 2012 into law on February 14, 2012. Act 11, *inter alia*, amended Chapter 13 of Title 66 of the Public Utility Code to grant the Commission authority to allow utilities to implement a DSIC, which would “provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1353(a). Act 11 also included certain consumer protections, including a requirement that the DSIC may not exceed 5% of amounts billed to customers. 66 Pa. C.S. § 1358(a)(1). Section

1358 allows the Commission to grant a waiver of the 5% limit “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” Id.

UGI-CPG’s DSIC was approved by Commission Order on September 11, 2014, and includes a 5% cap on billed distribution revenues. Petition at 4. The Company filed a quarterly update on March 21, 2016, which increased the DSIC rate to 4.65%. Petition at 4; UGI-CPG Exh. WJM-1. UGI-CPG anticipates that it will reach the 5% cap in its next quarterly DSIC update effective July 1, 2016. Petition at 6; UGI-CPG Exh. WJM-3. The Company contends that without a waiver of the 5% cap and an increase to 10%, it would need to file a base rate case to fund the level of DSIC-eligible infrastructure investment proposed in its modified Long-Term Infrastructure Improvement Plan (LTIIP).¹ Petition at 7.

The OCA submits that a waiver of the 5% cap and an increase to 10% is inappropriate and should not be approved in this case. The 5% cap was included in Act 11 in order to provide a very important protection to consumers. Although the Commission does have statutory authority to waive the 5% cap, a waiver is only to be granted “to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1358(a)(1). The OCA submits that UGI-CPG has not demonstrated in its Petition that a waiver and an increase in the cap to 10% is necessary for purposes of Section 1358(a)(1).

The Company states that, without an increase in the DSIC cap, “it is likely” the utility would be required to support its infrastructure investments through a base rate proceeding. Petition at 7. UGI-CPG argues that more frequent base rate cases should be avoided because the costs of a fully litigated base rate cases can be significant. Petition at 7-8. First, the mere fact

¹ The Company’s petition to modify its LTIIP was filed on February 29, 2016 and is pending review by the Commission. Petition of UGI-Central Penn Gas, Inc., Docket No. P-2013-2398835, Petition (Feb. 29, 2016).

that a higher DSIC “might” allow the Company to file base rate cases less frequently is not sufficient to eliminate the protection provided by the 5% cap. The DSIC is an “additional mechanism” for utilities to recover eligible costs between base rate cases; it is not intended to prevent base rate cases. 66 Pa. C.S. § 1350. Many economic and financial factors together determine the frequency of a utility’s base rate increase requests and the costs incurred in the review of those requests. Some of those factors are within the control of the Company. One factor is the availability of the fully forecasted future test year (FFFTY), which allows utilities to establish base rates based on spending in the first year that rates are in effect, thus capturing additional infrastructure spending. UGI-CPG’s most recent base rate case was filed in January 2011² – before the passage of Act 11 allowing the use of the FFFTY – but the Company may choose to utilize the FFFTY mechanism in its next base rate case.

Moreover, UGI-CPG has not fully utilized the DSIC mechanism since it was approved for the Company in September 2014. First, the Company entered into a settlement with the Commission’s Bureau of Investigation and Enforcement at Docket No. C-2012-2308997 that prohibited UGI-CPG from seeking recovery of any costs that would otherwise be eligible for DSIC recovery until February 19, 2015. Then, the Company was prohibited from charging a positive DSIC because it was overearning for DSIC purposes.³ As a result, the Company has charged a positive DSIC in only one month, April 2016, in the 18 months since its DSIC tariff was approved.

As further reason to deny the Petition, the Company provides no specific reason to increase the cap to 10%. UGI-CPG estimates that a 10% cap would allow the Company to fully

² Pa. P.U.C. v. UGI Central Penn Gas, Inc., Docket No. R-2010-2214415, Order (Aug. 19, 2011) (2011 Rate Order).

³ 66 Pa. C.S. § 1358(b)(3); see UGI-CPG Chapter 71 Quarterly Financial Reports, Sched. D-2; Staff Reports on the Quarterly Earnings of Jurisdictional Utilities, Att. E.

recover its eligible infrastructure investment until October 2017 (18 months) without an increase to base rates. UGI-CPG St. 1 at 10, UGI-CPG Exh. WJM-3. UGI-CPG last increased base rates in September 2011. 2011 Rate Order. It began an accelerated infrastructure improvement program in 2012, which it carried out for more than 3 years without charging a positive DSIC.⁴ The request for a 10% DSIC cap is, thus, based on UGI-CPG's arbitrary determination that it is better to extend the interval between base rate changes to 72 months (September 2011 to September 2017) than some lesser interval.⁵ Id. This has no bearing on the statutory standard for granting a waiver.

The Company's relative cost argument is also unpersuasive. UGI-CPG has not fully litigated a base rate case – both were comprehensively settled. 2011 Rate Order at 19-20; Pa. P.U.C. v. UGI-CPG, Docket No. R-2008-2079675, Order at 1 (Aug. 27, 2009). Further, the OCA disagrees that an increase of \$0.56 to \$2.80 per month is “small.” UGI-CPG St. 1 at 9. The same customer may be paying a DSIC of 5% or 7.5% on each of his/her regulated utility bills, *i.e.* electric, water and wastewater. In addition, when UGI-CPG's underlying base rates increase, the DSIC cap will be applied to a higher bill. Finally, the Company's cost argument ignores that increases to base rates and DSIC rates are not the only source of funding infrastructure improvements. It is the role of Company management to ensure that a level of safe, adequate and reliable service is maintained within the just and reasonable level of revenues allowed by the Commission.

⁴ Petition of UGI Central Penn Gas, Inc., Docket No. P-2013-2398835, LTIP at 28 (Dec. 12, 2013); n.3, supra.

⁵ UGI-CPG Exh. WJM-3 indicates that the Company expects to exceed the 10% cap by October 2017. September 2011 to September 2017 = 72 months. The Company expects to exceed the 5% cap by June 2016. September 2011 to June 2016 = 57 months.

Taken together, there is no basis for the Commission to approve UGI-CPG's requested waiver. The mere fact that a higher DSIC cap might allow UGI-CPG to file base rate cases less frequently – compared to the current 5+ year interval since its last general base rate filing – is not sufficient to eliminate the protection provided by the 5% cap. The cap may only be exceeded if and when the utility demonstrates that a higher level is necessary “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. §1358(a)(1). There is no evidence that UGI-CPG is unable to replace its infrastructure at an accelerated pace by filing base rate cases using the Act 11 fully forecasted future test year mechanism and a DSIC within a 5% cap. If the cap can be routinely waived any time a utility reaches or anticipates reaching the 5% maximum and chooses not file a base rate case, then the important protection provided by the General Assembly through the DSIC cap would be meaningless.

For the above reasons and those set forth below, the OCA submits that UGI-CPG's Petition and its proposed DSIC increase should be denied.

II. UGI-CPG Should Not Be Permitted to Increase the DSIC Cap Subject to Refund.

The OCA submits that UGI-CPG's Petition should be denied for the reasons discussed above. If not, the request should be fully examined to ensure that it complies with Act 11. The OCA has raised fundamental concerns with UGI-CPG's proposal to waive a protection of Act 11. There is substantial cause to wait to increase rates above the statutory 5% DSIC cap until all issues identified by the OCA and any other parties participating in the proceeding can be fully investigated.

Contrary to UGI-CPG's claim, its request is not consistent with past Commission action. Petition at 8. The Commission has never granted waiver of the DSIC cap subject to refund.

Waiving the cap is factually and legally distinct from allowing an initial DSIC tariff to take effect. The Company's request for expedited approval subject to refund should be denied.

III. Specific Responses to Numbered Paragraphs

1-10. Admitted.

11. Denied. UGI-CPG has made no showing that a higher DSIC rate is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" for purposes of Section 1358(a)(1). If the Commission does not deny the Petition outright, the Company should be required to prove through sworn testimony at hearings that a 10% DSIC cap is needed to ensure and maintain adequate, efficient, safe, reliable and reasonable service and that the increase is just and reasonable under the Public Utility Code.

12-13. Admitted.

14. Denied. As discussed above, UGI-CPG has made no showing that a higher DSIC rate is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" for purposes of Section 1358(a)(1). If the Commission does not deny the Petition outright, the Company should be required to prove through sworn testimony at hearings that a 10% DSIC cap is needed to ensure and maintain adequate, efficient, safe, reliable and reasonable service and that the increase is just and reasonable under the Public Utility Code.

15. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

16. Denied in part. The OCA denies that increasing the DSIC cap to 10% is necessary for purposes of Section 1358(a)(1). The OCA is without knowledge and information

that would allow it to either admit or deny the remaining statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

17. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. The OCA notes, however, that UGI-CPG's averments assume that the utility does not seek to increase base rates prior to October 2017. If the Commission does not deny the Petition outright, the Company should be required to prove its statements through sworn testimony at hearings.

18. Denied. The OCA is without information to admit or deny what is the cost of increasing the DSIC rate by 1% up to 10% for the average customer. The OCA denies that \$2.80 per monthly bill is "small." Moreover, the same customer may be paying a DSIC of 5% or 7.5% on each of his/her regulated utility bills, *i.e.* electric, water and wastewater. The OCA does not agree that the DSIC cap is not necessary to ensure that ratepayers are adequately protected. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

19. Denied in part. The OCA is without information to admit or deny whether the work currently being done to the system is ensuring safe and reliable service. The OCA denies that accelerating DSIC-eligible investment can only be accomplished by increasing the DSIC cap to 10%. The DSIC is one means of recovering infrastructure improvement costs. The DSIC itself cannot ensure that customers receive safe and reliable service. Additional ratepayer dollars are not the only source of funding infrastructure improvements. It is the role of Company management to ensure that a level of safe, adequate and reliable service is maintained within the just and reasonable level of revenues allowed by the Commission. Further, factors unrelated to

the DSIC can affect the timing of rate cases. As discussed above, many economic and financial factors together determine the frequency of a utility's base rate increase requests and the costs incurred in the review of those requests. Some of those factors are within the control of the Company. Accordingly, if the Commission does not deny the Petition outright, the Company should be required to prove through sworn testimony at hearings that a 10% DSIC cap is needed to ensure and maintain adequate, efficient, safe, reliable and reasonable service and that the increase is just and reasonable under the Public Utility Code.

20. Denied. If UGI-CPG's petition is not denied based on the pleadings, the request should be fully examined to ensure that it complies with Act 11. As discussed above, the OCA has raised fundamental concerns with UGI-CPG's proposal to waive a protection of Act 11. There is substantial cause to wait to increase rates above the statutory 5% DSIC cap until all issues identified by the OCA and any other parties participating in the proceeding can be fully investigated. The purpose of the DSIC is to reduce, rather than eliminate all regulatory lag. The Company was in an overearning position for DSIC purposes since it began its current accelerated infrastructure replacement program. If the Company is no longer overearning, it has the option to file a base rate case and utilize a FFFTY, in order to fully recover its eligible infrastructure replacement.

21. Denied. Contrary to UGI-CPG's claim, its request is not consistent with past Commission action. The Commission has never granted waiver of the DSIC cap subject to refund. Waiving the cap is factually and legally distinct from allowing an initial DSIC tariff to take effect. The Company's request for expedited approval subject to refund should be denied.

22-23. Admitted.

24. The OCA is without information to admit or deny.

25. This paragraph is a request for relief to which no response is required.
26. Admitted.

WHEREFORE, for all of the foregoing reasons, the instant Petition should be denied.

Respectfully Submitted,



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DATED: April 20, 2016