

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 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 Revenues  
Docket No. P-2016-2537594

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

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CERTIFICATE OF SERVICE

Petition of UGI Penn Natural Gas, Inc. :  
for a Waiver of the Distribution System :  
Improvement Charge Cap of 5% of Billed : Docket No. P-2016-2537594  
Distribution 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 20<sup>th</sup> day of April 2016.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Johnnie E. Simms, Esquire  
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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 : Docket No. P-2016-2537594  
Revenues and Approval to Increase the Maximum :  
Allowable DSIC to 10% of Billed Revenues :

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

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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 Penn Natural Gas, Inc. in the above-captioned proceeding.

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

On March 31, 2016, UGI Penn Natural Gas, Inc. (UGI-PNG or the Company) filed the above-captioned Petition. Through its Petition, UGI-PNG 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-PNG’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 5.00% based on a calculated DSIC rate of 5.97%. Petition at 4, 6; UGI-PNG Exh. WJM-1. 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 (LTIIIP).<sup>1</sup> 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-PNG 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-PNG 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 8. First, the mere fact that a higher DSIC “might” allow the Company to file base rate cases less frequently is not sufficient

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<sup>1</sup> The Company’s petition to modify its LTIIIP was filed on February 29, 2016 and is pending review by the Commission. Petition of UGI Penn Natural Gas, Inc., Docket No. P-2013-2397056, Petition (Feb. 29, 2016).

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-PNG’s most recent base rate case was filed in January 2009<sup>2</sup> – 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-PNG has not fully utilized the DSIC mechanism since it was approved for the Company in September 2014. The Company entered into a settlement with the Commission’s Bureau of Investigation and Enforcement at Docket No. C-2012-2308997 that prohibited UGI-PNG from seeking recovery of any costs that would otherwise be eligible for DSIC recovery until February 19, 2015. As a result, the Company has charged a positive DSIC for only 12 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-PNG estimates that a 10% cap would allow the Company to fully recover its eligible infrastructure investment until October 2017 (18 months) without an increase to base rates. Petition at 9, UGI-PNG Exh. WJM-3. UGI-PNG last increased base rates in September 2009. 2009 Rate Order. It began an accelerated infrastructure improvement program

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<sup>2</sup> Pa. P.U.C. v. UGI Penn Natural Gas, Inc., Docket No. R-2008-2079660, Order (Aug. 27, 2009) (2009 Rate Order).

in 2012, which it carried out for more than 3 years without charging a positive DSIC.<sup>3</sup> The request for a 10% DSIC cap is, thus, based on UGI-PNG's arbitrary determination that it is better to extend the interval between base rate changes to 8 years (September 2009 to September 2017) than some lesser interval.<sup>4</sup> Id. This has no bearing on the statutory standard for granting a waiver.

The Company's relative cost argument is also unpersuasive. UGI-PNG's last base rate case was not fully litigated – it was comprehensively settled. 2009 Rate Order at 1. Further, the OCA disagrees that an increase of \$0.48 to \$2.39 per month is “small.” UGI-PNG 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-PNG'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.

Taken together, there is no basis for the Commission to approve UGI-PNG's requested waiver. The mere fact that a higher DSIC cap might allow UGI-PNG to file base rate cases less frequently – compared to the current 7+ 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

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<sup>3</sup> Petition of UGI Penn Natural Gas, Inc., Docket No. P-2013-2397056, LTIP at 28-29 (Dec. 12, 2013); n.3, supra.

<sup>4</sup> UGI-PNG Exh. WJM-3 indicates that the Company expects to exceed the 10% cap by October 2017. September 2009 to September 2017 = 8 years. The Company first charged a 5% DSIC in April 2016. September 2009 to March 2016 = 6.5 years.

maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. §1358(a)(1). There is no evidence that UGI-PNG 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-PNG’s Petition and its proposed DSIC increase should be denied.

## **II. UGI-PNG Should Not Be Permitted to Increase the DSIC Cap Subject to Refund.**

The OCA submits that UGI-PNG’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-PNG’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-PNG’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-PNG 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-PNG 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-PNG’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 \$2.39 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-PNG'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-PNG'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-PNG'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.

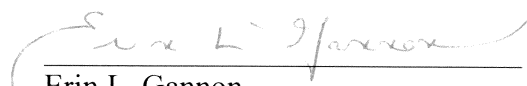
24. The OCA is without information to admit or deny.

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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Counsel for:  
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DATED: April 20, 2016