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September 22, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Petition of UGI Central Penn Gas, Inc. for 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; Docket No. P-2016-2537609

Dear Secretary Chiavetta:

Enclosed for filing please find the Main Brief of the Central Penn Gas Large Users Group ("CPGLUG") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served.

Sincerely,

McNEES WALLACE & NURICK LLC

By Alessandra Hylander
Alessandra L. Hylander

Counsel to the Central Penn Gas Large Users Group

Enclosure
c: Administrative Law Judge Angela T. Jones
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated this 22nd day of September, 2016, at Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of UGI Central Penn Gas, Inc. for 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	:	Docket No. P-2016-2537609

MAIN BRIEF OF THE CENTRAL PENN GAS LARGE USERS GROUP ("CPGLUG")

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Glen-Gery Corporation
SAPA Extrusions, Inc. ("Cressona")

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Date: September 22, 2016

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I. INTRODUCTION

On February 14, 2012, Governor Corbett signed Act 11 of 2012 ("Act 11") into law. Act 11 modified the Pennsylvania Public Utility Code to allow certain utilities, including natural gas distribution companies ("NGDCs"), such as UGI Central Penn Gas, Inc. ("CPG" or "Company"), to petition the Pennsylvania Public Utility Commission ("PUC" or "Commission") for approval to implement a Distribution System Improvement Charge ("DSIC"). 66 Pa. C.S. §§ 1350-1360. The DSIC is designed to offer "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 services." *Id.* at § 1353(a). Act 11 provides certain limitations on DSIC implementation. One such limitation is a customer safeguard, which provides that the PUC "may upon petition grant a waiver of the 5% limit . . . for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." *Id.* at § 1358(a)(1).

CPG petitioned the Commission to waive the 5% cap on the DSIC rate, the maximum amount allowed under Act 11, and increase the DSIC rate cap to 10% of billed distribution revenues. As stated under Section 1358 of the PUC's Regulations, the standard for waiver is whether that waiver is essential in order to "ensure and maintain adequate, efficient, safe, reliable and reasonable service." *Id.* CPG fails to meet this standard for waiver because, by its own admission, the Company confirmed it could continue to provide safe, reliable, and reasonable service if the request to increase the DSIC to 10% is not approved.

Even if the Company arguably satisfied the statutory standard necessary to warrant a DSIC waiver, the Commission should not exercise its discretion to grant CPG's waiver request. In support of its request, the Company asserts that customers will not be negatively impacted by the DSIC increase and references customer safeguards in its tariff that purportedly will afford sufficient consumer protection. As discussed in further detail below, the record lacks a reasonable basis to conclude that the Company's customer safeguards would provide meaningful protection in the event of a DSIC increase.

II. PROCEDURAL HISTORY

On December 12, 2013, CPG filed a petition for approval of a DSIC and a separate petition for approval of a Long-Term Infrastructure Improvement Plan ("LTIIP"). The PUC approved the Company's recommended LTIIP and DSIC on September 11, 2014, subject to refund, pending final disposition of certain remaining issues assigned to the Office of Administrative Law Judge. *See Petition of UGI Central Penn Gas, Inc., for Approval of its Long-Term Infrastructure Improvement Plan; Petition of UGI Central Penn Gas, Inc., for Approval of a Distribution System Improvement Charge*, Docket No. P-2013-2398835. The Company settled those remaining matters with the other parties in that proceeding, and on July 8, 2015, the PUC approved the settlement. Opinion and Order, *Petition of UGI Central Penn Gas, Inc., for Approval of a Distribution System Improvement Charge*, Docket No. P-2013-2398835 (July 8, 2015). On September 18, 2014, the Company filed a tariff supplement with the PUC which implemented a DSIC of 0.0% for bills rendered on or after October 1, 2014. Subsequently, the Company filed quarterly updates to that DSIC rate. CPG's current DSIC rate is 5% of billed distribution revenues, the maximum amount permitted under Act 11 absent a PUC-issued waiver to exceed that limit.

On March 31, 2016, the Company filed the above-captioned petition with the PUC requesting that the Commission waive the 5% DSIC cap and authorize CPG to institute a higher DSIC rate cap equal to 10% of billed distribution revenues. The Company estimated that "[u]nder the current projections UGI-CPG will exceed the 5% DSIC cap as of the July 1, 2016 quarterly filing, due to the Company's substantial ongoing investment in DSIC-eligible plant." *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 Distribution Revenues, Docket No. P-2016-2537609, page 6, ¶ 14 (Mar. 31, 2016) ("DSIC Petition").

On April 20, 2016, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Public Statement in this proceeding. That same day, the Office of Small Business Advocate ("OSBA") filed a Notice of Appearance in this case. Soon thereafter, on May 6, 2016, the Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance in this above-captioned proceeding.

Following a prehearing conference held on June 17, 2016, the Presiding Officer, Administrative Law Judge ("ALJ") Angela T. Jones, issued *Prehearing Conference Order #2*, establishing the litigation schedule and rules for discovery, testimony, and other prehearing preparations.[1] *Prehearing Conference Order #2*, Docket No. P-2016-2537609 (June 21, 2016).

On June 29, 2016, CPGLUG filed with the Commission a Petition to Intervene and Answer in the above-captioned proceeding.[2] The ALJ granted CPGLUG Intervenor status in this proceeding on July 20, 2016. *Order #3*, Docket No. P-2016-2537609, page 2 (July 20, 2016).

On September 8, 2016, the parties convened at a full evidentiary hearing at the Commission's Harrisburg location. The testimony of CPG, OCA, I&E, and OSBA was admitted into the evidentiary record, and cross-examination of the following witnesses took place: Mr. William J. McAllister and Mr. Hans G. Bell, on behalf of the Company; Mr. Sunil R. Patel, on behalf of I&E; and Mr. Robert D. Knecht, on behalf of the OSBA.

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[1] With permission from the ALJ, counsel for CPGLUG attended the June 17, 2016 prehearing conference in an observational capacity.

[2] CPGLUG's Petition to Intervene and Answer explains the extenuating circumstances which prevented it from intervening before the May 9, 2016 deadline. CPGLUG explained those circumstances to the ALJ and the other parties at the June 17, 2016 prehearing conference.

III. BURDEN OF PROOF

As the proponent of a rule or order that would modify the Company's DSIC, CPG bears the burden of proving that it is entitled to the relief it seeks. 66 Pa. C.S. §§ 315; 332(a). CPG must establish the facts by a "preponderance of the evidence." *Se-Ling Hosiery, Inc. v. Margulies,* 70 A.2d 854, 855-856 (Pa. 1950). The evidence produced by CPG in order to meet this burden must be "substantial" and not a mere trace or suspicion of the existence of a fact. *See Lower Frederick Twp. Water Co. v. Pa. Pub. Util. Comm'n.*, 409 A.2d 505, 507 (Pa. Commw. 1980) (citing *Johnstown v. Pa. Pub. Util. Comm'n.*, 133 A.2d 246 (Pa. Super. Ct. 1957)); *see also Barasch v. Pa. Pub. Util. Comm'n.*, 491 A.2d 94, 101-102 (Pa. 1985). Thus, CPG bears the burden of establishing that its DSIC proposal is just and reasonable.

The law indicates that a party opposing a utility's rate filing does not bear a similar burden. *Berner v. Pa. Pub. Util. Comm'n.*, 116 A.2d 738, 744 (Pa. 1955). Therefore, it is not compulsory for CPGLUG to prove that CPG's petition to waive the 5% DSIC cap and implement a 10% DSIC is unfair, unreasonable, or not in the public interest. To succeed in its challenge, CPGLUG only needs to show that CPG failed to meet its burden of proof.

IV. ARGUMENT

A. CPG Has Not Satisfied the Statutory Standard Necessary To Secure a Waiver of the 5% DSIC Cap and Increase Its DSIC Cap to 10% of Billed Distribution Revenues.

The Company's DSIC Petition seeks a waiver of Act 11's 5% DSIC cap and an increase of its DSIC cap to 10% of billed distribution revenues. The standard for the Commission to waive the 5% DSIC cap is whether such increase is necessary for the NGDC to ensure and maintain adequate, efficient, safe, reliable and reasonable service. CPG has not satisfied its burden of demonstrating that it has met the standard for a DSIC waiver. Therefore, the Company's request for a waiver and increased DSIC cap of 10% should be denied.

Section 1353 of the Commission's Regulations indicates that a utility may implement a DSIC "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1353(a). Likewise, Section 1358(a)(1) of the PUC's Regulations specifies that the Commission cannot waive the DSIC cap unless, without the waiver, the utility cannot "ensure and maintain adequate, efficient, safe, reliable and reasonable service." *Id.* at § 1358(a)(1). Although the legislature uses the same language for the conditions under which a DSIC should be adopted and the circumstances under which a waiver of the cap in the DSIC rate may be granted, one cannot presume that the standard for implementing a DSIC is the same as the standard for granting a waiver of the DSIC. As explained by the OSBA's witness Mr. Robert D. Knecht:

> [I]t would appear that the legislature wanted the Commission to establish DSICs, it wanted to impose some basic consumer protections to avoid abuse, and it wanted to include an opportunity for the Commission to waive one of those consumer protections under some circumstances . . . The intent of Act 11 appears to allow utilities to implement a DSIC in order to encourage replacement (and perhaps accelerated replacement) of aging distribution assets. Thus, it seems unlikely that the legislature intended that utilities be required to demonstrate that they would be unable to provide adequate service without a DSIC. Moreover, Pennsylvania utilities have been able to meet their service obligations for a long time without a DSIC mechanism, and it would be difficult for them to demonstrate that they could not continue to do so without a DSIC.

OSBA Statement No. 1, page 5, lines 16 through 30. Witness Knecht further testified:

> [I]t also seems unlikely that the legislature would require the exact same standards to apply to granting a DSIC and granting a waiver of the 5 percent cap. *If the same standard were to apply, the 5 percent cap would be waived automatically once a DSIC was granted. As such, the 5 percent cap would have no effect whatsoever, and there would be no reason for the legislature to include it.*

Id. at page 6, lines 3 to 8 (emphasis added).

The OCA interprets Section 1358(a)(1) of the PUC's Regulations in the same manner as OSBA, noting that "Act 11 does not give the Commission authority to waive the cap unless, without a waiver, the utility cannot ensure and maintain adequate, efficient, safe, reliable and reasonable service." OCA Statement No. 1, page 6, lines 8 through 10. According to the OCA, "if the evidentiary burden for a utility to receive approval for a waiver is the same as the burden to receive approval for an LTIIP or DSIC, then every utility that qualifies for a DSIC under Act 11 would automatically and immediately qualify for a waiver of the cap upon request. That would mean that the cap and waiver provision serve no purpose." *Id.* at page 2, lines 19 through 24. Therefore, under Act 11, the Company must demonstrate that a waiver of the DSIC is necessary to provide it with the funding to meet its public utility obligations. To find otherwise would effectively "eliminate Commission discretion with respect to authorizing a DSIC cap greater than 5 percent." *Id.* at page 3, lines 16 through 19.

Furthermore, legislative history demonstrates that the 5% DSIC cap is a key consumer protection. When the Senate considered House Bill 1294, both Republican and Democratic Senators emphasized the consumer protection function of the 5% DSIC cap. *Commonwealth of Pennsylvania Legislative Journal – Senate*, 196th Gen. Assemb., 2012 Sess., pp. 71-72 (statements of Sen. Tomlinson and Sen. Boscola on House Bill 1294) (Jan. 25, 2012). Furthermore, during the Senate debate, Senator Boscola indicated that this 5% DSIC cap should be strictly construed: "One of the key components of the bill is the consumer protection part that puts a 5-percent cap on the DSIC. Now, not only does this cap protect ratepayers from exorbitant utility bills, but it insures that the DSIC provided for in this legislation does not replace rate cases in Pennsylvania. It was never intended to do that." *Id.* at p. 72 (statement of Sen. Boscola on House Bill 1294). As such, the 5% cap should be strictly enforced and not exceeded unless there is a clear showing that service reliability is in danger.

The record in this proceeding fails to support the Company's claim that a DSIC waiver and increase are necessary. Specifically, the circumstances prompting CPG's DSIC waiver request do not indicate that the Company's infrastructure poses significant safety and reliability issues, nor does the Company's DSIC Petition indicate that the current pace of its infrastructure replacement efforts is unacceptable and possibly harmful to the public. OCA Statement No. 1, page 6, lines 14 through 17. In fact, in response to an Interrogatory labeled OCA-I-1, "which asked if the Company would continue to provide safe, reliable, and reasonable service if the request to increase the DSIC to 10 % is not approved, the Company stated that it will continue to meet its obligation to provide safe and reliable service to its customers." *Id.* at lines 19 through 21.

Furthermore, to date, only one NGDC, Philadelphia Gas Works ("PGW"), has received a waiver of the 5% DSIC cap. Opinion and Order, *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, Docket No. P-2015-2501500 (Jan. 28, 2016) ("*PGW Initial Order*"); Opinion and Order, *Petition for Reconsideration, Amendment and/or Clarification of the Commission's Final Order Entered January 28, 2016*, Docket No. P-2015-2501500 (July 6, 2016) ("*PGW Reconsideration Order*"). The circumstances in the PGW proceeding, however, are not present here. PGW presented "significant safety and reliability issues," and "approximately 66% of PGW's 3,000 miles of gas main infrastructure consists of at-risk cast iron and unprotected steel mains. This percentage is among the highest of any natural gas distribution company in Pennsylvania." *PGW Reconsideration Order*, page 9 (citing *PGW Initial Order*, pages 41-42). Even in PGW's state, the PUC initially denied the utility's request to raise the DSIC cap to 10%.

Upon reconsideration, the PUC approved only a temporary increase to 10%.[3] On or around 2018, PGW must decrease its DSIC to 7.5% in order to enable an aggressive, accelerated replacement strategy. OCA Statement No. 1, page 6, lines 12 through 17. The PGW case presented significant safety and reliability issues that are not present in this proceeding. Accordingly, the PGW case cannot be used as precedent in support of CPG's requested increase in this proceeding.

In conclusion, the record evidence in this proceeding does not support a finding that CPG's DSIC must be increased from 5% to 10% of billed distribution revenues in order to enable the Company to meet its duties as a jurisdictional NGDC. Therefore, CPG failed to meet the burden of proof regarding its request for a waiver of the statutory cap of 5%, and CPG's petition for waiver and increase of its DSIC cap should be denied.

B. Even If CPG Were Deemed To Satisfy the Statutory Standard for a DSIC Waiver, the Commission Should Not Exercise Its Discretion To Grant CPG's DSIC Petition.

Even if the Commission determines that CPG meets the standard for waiver, CPGLUG respectfully submits that the Commission should not exercise its discretion to increase the DSIC cap to 10% of billed distribution revenues. To do so not only presents little to no benefit to customers, but also exposes customers to cost increases against which the Company's current safeguards may not offer meaningful protection.

CPG indicates that an increase in the DSIC rate cap to 10% is warranted and in the public interest. DSIC Petition, page 5. CPG alleges that the "incremental cost to customers is small when compared to the noticeable benefits." *Id.* at page 7, ¶ 18. CPG claims that "[b]ecause the impact of increasing the DSIC cap on customers' bills is small, the tremendous benefits associated with

[3] "Upon reconsideration, the PUC considered new information from PGW regarding the 2015 undercollection cause by PGW transitioning to an annualized, levelized DSIC, which was a one-time event." OCA Statement No. 1, page 5, lines 21 through 23 (citing *PGW Order* in Docket No. P-2015-2501500, pages 17, 26-28.

improved safety and reliability that will be accomplished as a result of the accelerated investment in DSIC-eligible plant is clearly in the public interest." *Id.* at page 8, ¶ 19.

The Company relied upon witness William J. McAllister, a Principal Analyst with the Company, to add further support to its claim that granting the DSIC Petition is in the public interest. According to Mr. McAllister, "because the impact [of a 10% DSIC] on customers' bills is small . . . the tremendous benefits associated with improved safety and reliability that will be accomplished as a result of the accelerated investment in DSIC-eligible plant is clearly in the public interest." UGI Statement No. 1, page 10, lines 20 through 23. In support of his claim that a DSIC cap increase will have minimal impact on customers, Mr. McAllister cites to various analyses as Exhibit WJM-3. UGI Statement No. 1, page 9, lines 19 through 22. In addition, Mr. McAllister alleges that granting the DSIC Petition will not impact existing consumer protections:

> DSIC tariff continues to provide sufficient customer safeguards in its structure. In addition to still have a ceiling on recovery of capital . . . the tariff also continues to include the following safeguards: (1) annual reconciliations performed by the Company and reviewed by the Commission, (2) audits conducted by the Commission, (3) customer notice of any changes in the DSIC, and (4) a reset of the DSIC to zero if the Company's return in any quarter exceeds the return used to calculate the DSIC. The DSIC continues to balance consumer protections with the need to ensure that those same consumers receive safe and reliable service.

UGI Statement No. 1, page 11, lines 1 through 10. However, despite making these assertions, the record is devoid of evidence demonstrating that the Company's safeguards will provide meaningful protection to all customer classes, including large commercial and industrial customers, in the event the DSIC cap is increased to 10%, as requested by CPG.

At the hearing, Mr. McAllister was questioned about customer safeguards under Rider G of the Company's currently-effective tariff, CPG Gas – Pa. P.U.C. No. 4, which provides, among other things, for the elimination or reduction of the DSIC for certain customers with competitive alternatives. *See* Section 14.C.8.5 of CPG Gas – Pa. P.U.C. No. 4; *see also* Transcript of Record at pages 63 through 71, lines 8 through 7. During cross-examination, Mr. McAllister demonstrated no knowledge of the eligibility criteria that a customer must demonstrate in order to receive a DSIC elimination or reduction:

> Q. [T]o the best of your knowledge, do you know what general criteria the [C]ompany would look at when considering whether to reduce the DSIC for a competitive customer class?
>
> A. I don't have any specific knowledge of the contract negotiations.

Transcript of Record at page 67, lines 4 through 8. Moreover, Mr. McAllister was unable to recall whether any customers had ever received a DSIC elimination or reduction:

> Q. [T]o the best of your knowledge, do you know if the [C]ompany has ever granted a DSIC reduction?
>
> A. I do not know.
>
> Q. [T]o the best of your knowledge, do you know if the [Company has] ever granted a DSIC elimination?
>
> A. I do not know.

Id. at page 71, lines 2 through 7.

Based on the foregoing, the record lacks support for the Company's claim that existing customer safeguards will provide sufficient protection against the impact of an increase to the Company's DSIC. Therefore, the Commission should not afford any weight to the Company's assertions regarding the purported ameliorative effect of the existing customer safeguards in determining whether to exercise its discretion to the grant a DSIC waiver and increase for CPG. Thus, even if CPG were deemed to satisfy the statutory standard for a DSIC waiver (which it does not), the Commission should not exercise its distribution to grant the Company's requested relief.

V. CONCLUSION

CPGLUG respectfully submits that the Company's request to waive the current 5% DSIC cap and increase it to 10% of billed distribution revenues should be denied for the reasons set forth herein.

Respectfully Submitted,

By: Alessandra Hylander

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