COMMONWEALTH OF PENNSYLVANIA

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September 22, 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 Main Brief 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
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Attachment
cc: Honorable Angela T. Jones
Certificate of Service
226005

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 Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Revenues	: : : : :	Docket No. P-2016-2537609

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, 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 22nd day of September 2016.

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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 Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Revenues	: : : : : :	Docket No. P-2016-2537609

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: September 22, 2016

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I. INTRODUCTION AND STATEMENT OF THE CASE

Act 11 of 2012 amended the Public Utility Code to grant the Commission authority to allow utilities to implement a Distribution System Improvement Charge (DSIC), which permits recovery of certain reasonable and prudent capital costs incurred to repair, improve or replace eligible property. 66 Pa. C.S. §§ 1350-1360 (effective Apr. 16, 2012). Act 11 also provided several consumer protections, including the requirement that the DSIC may not exceed 5 percent of amounts billed to customers under the utility's distribution rates. 66 Pa. C.S. § 1358(a)(1).

UGI Central Penn Gas, Inc. (UGI-CPG or Company) wants the Commission to waive the 5 percent cap and increase the maximum DSIC to 10 percent of billed distribution revenues. The statutory standard is whether the waiver is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." Id. The Company does not meet this burden because, by its own admission, it is able to continue an aggressive, accelerated infrastructure replacement program without any increase to the DSIC cap.

Even if the Commission determines that waiver is necessary, contrary to the recommendations of the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA), the Company has not provided reasonable basis for the Commission to exercise its discretion to increase the DSIC cap to 10 percent. The only alleged benefit to ratepayers is the potential avoidance of costs associated with base rate cases. UGI-CPG makes no commitment, however, that it will delay filing a base rate case if the cap is raised to 10 percent. The Company has not filed a base rate case in 6 years and has never utilized the Act 11 future test year mechanism.

For these reasons and additional reasons discussed below, UGI-CPG has not met its burden of proof and no waiver of Act 11 should be granted.

II. PROCEDURAL HISTORY

UGI-CPG's initial DSIC went into effect April 1, 2015. Petition of UGI Central Penn Gas, Inc. for Approval of a DSIC, Docket No. P-2013-2398835, Order (Sept. 11, 2014) (2014 Order). The Company was authorized to bill customers up to 5 percent of its non-gas revenues to fund the replacement of bare steel, cast iron and wrought iron mains. CPG was authorized to charge a 0.0 percent DSIC for bills rendered on or after October 1, 2014. CPG St. 1 at 5. The Company subsequently filed quarterly updates to its DSIC rate. CPG's current DSIC is 5 percent. OCA St. 1 at 3.

UGI-CPG's DSIC includes a 5 percent cap on billed revenues. 2014 Order at 37. On March 31, 2016, CPG filed a Petition asking the Commission to waive the current DSIC cap of 5 percent of distribution revenues and approve a 5 percent increase in the maximum DSIC to 10 percent. The OCA and OSBA filed Answers and Notices of Intervention opposing the Company's Petition on April 20, 2016. On May 6, 2016, I&E filed Notice of Appearance.

The Presiding Officer, Administrative Law Judge Angela T. Jones, issued Prehearing Conference Order #2 establishing a litigation schedule, on June 21, 2016. In accordance with that schedule, the OCA filed the following testimony:

OCA Statement No. 1, Direct Testimony of Jerome D. Mierzwa

OCA Statement No. 1R, Rebuttal Testimony of Jerome D. Mierzwa

OCA Statement No. 1S, Surrebuttal Testimony of Jerome D. Mierzwa

The OCA's testimony was entered into the record at the Evidentiary Hearing held on September 8, 2016. The OCA now provides this Main Brief in accordance with the procedural schedule. The OCA's proposed Findings of Fact, Conclusions of Law and Ordering Paragraph are attached hereto as Appendices A, B and C.

III. BURDEN OF PROOF

UGI-CPG bears the burden of proof to establish the justness and reasonableness of every element of its proposed Distribution System Improvement Charge. As set forth in Section 315(a) of the Public Utility Code:

> Reasonableness of rates- In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a). The Commonwealth Court interprets this principle as follows:

> Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. P.U.C., 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted); see also Brockway Glass v. Pa. P.U.C., 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden of proof must establish that "the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary." Burleson v. Pa. P.U.C., 461 A. 2d 1234, 1236 (Pa. 1983) (Burleson). Thus, a utility has an affirmative burden to establish the justness and reasonableness of every component of its rate request.

The OCA points out that Pennsylvania law is clear that there is no similar burden for a party proposing an adjustment to a utility rate filing. See, e.g., Berner v. Pa. P.U.C., 383 Pa. 622, 116 A. 2d 738 (1955) (Berner). In Berner, the Pennsylvania Supreme Court stated:

> [T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden, is by statute, on the utility to demonstrate the reasonable necessity and cost of the installations and that is the burden which the utility patently failed to carry.

Berner, 382 Pa. at 631, 116 A.2d at 744. The Commission recognizes this standard in its rate determinations. Pa. P.U.C. v. Equitable Gas Co., 57 PaPUC 423, 471 (1983). See also University of Pa. v. Pa. P.U.C., 86 Pa. Commw. 410, 485 A.2d 1217 (1984). Thus, it is unnecessary for the OCA (or any challenger) to prove that UGI-CPG's proposed rate is unjust, unreasonable, or not in the public interest. To prevail in its challenge, Pennsylvania law requires only that the OCA show how the utility failed to meet its burden of proof.

In this proceeding, UGI-CPG must affirmatively establish (1) that waiver of the 5 percent statutory DSIC cap is necessary for the utility to ensure and maintain adequate, efficient, safe, reliable and reasonable service and (2) that a DSIC rate up to 10 percent of billed distribution revenues is just and reasonable. 66 Pa. C.S. §§ 1301, 1358(a)(1). The OCA will show that UGI-CPG has failed to satisfy its statutory burden in the manner set forth below.

IV. UGI-CPG HAS NOT SATISFIED THE STATUTORY STANDARD NOR SHOWN THAT COMMISSION DISCRETION SHOULD BE EXERCISED TO WAIVE THE 5 PERCENT DSIC CAP.

A. Statutory Standard for Granting the Waiver

UGI-CPG's Petition for waiver of Act 11 and increase of the DSIC cap to 10 percent of billed distribution revenues should be denied. The five percent revenue cap is a statutory limitation included in the DSIC mechanism as an important consumer protection. It prevents utilities from bypassing the traditional ratemaking process, ensuring that the DSIC serves its intended function to supplement – rather than replace – base rate proceedings. 66 Pa. C.S. §§ 1350, 1353, 1357(a)(1)(i); OCA St. 1 at 6. Accordingly, Act 11 does not give the Commission authority to waive the cap unless, without the waiver, the utility cannot ensure and maintain adequate, efficient, safe, reliable and reasonable service. 66 Pa. C.S. §1358(a)(1). Specifically, Section 1358 states:

> (1) 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 <u>in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.</u>

66 Pa. C.S. § 1358(a)(1) (emphasis added). The standard for the Commission to waive the 5 percent cap, therefore, is whether the incremental DSIC revenue is necessary for UGI-CPG to ensure and maintain adequate, efficient, safe, reliable and reasonable service. <u>Id.</u>; OCA St. 1 at 3. Then, if it is determined that additional DSIC recovery is necessary, the Commission has discretion whether or not to grant a waiver. UGI-CPG has not met its burden of showing that waiver is necessary. Should the Commission determine that the standard for waiver has been met, the OCA submits that the Commission should not exercise its discretion to allow a DSIC rate up to 10 percent.

B. UGI-CPG Has Not Shown that Waiver Is Necessary.

UGI-CPG claims that waiver of the DSIC surcharge cap and increase to 10 percent is in the best interest of its customers "because it is able to receive a return on the capital it is investing without regulatory lag" and avoids the "expense and administrative burden associated with frequent base rate proceedings." CPG St. 1 at 10. Review of the record shows, however, that the Company does not meet the statutory standard for waiver.

First, there has been no claim in this proceeding that the current state of UGI-CPG's infrastructure poses significant safety and reliability issues or that the current pace of the Company's replacement efforts is unacceptable and potentially harmful to the public. OCA St. 1 at 6. Indeed, in 2016, the Commission re-approved the same replacement schedule for UGI-CPG for the 2014-2018 LTIIP period that it originally approved in 2014. See Petition of UGI-CPG for Approval of its LTIIP, Docket No. P-2013-2398835, Order at 17 (Sept. 11, 2014) (2014 Order); Petition of UGI-CPG for Approval of its Modified LTIIP, Docket No. P-2013-2398835, Order at 4, 6 (June 30, 2016) (2016 Order). In addition, the record shows that UGI-CPG has made progress in reducing risk with a DSIC capped at 5 percent. OCA St. 1R at 2. OCA witness Mierzwa[1] stated:

> [O]verall, as indicated in the Company's response to I&E-GS-2, CPG's risk for cast iron/wrought iron mains declined from 4,118 to 3,986, or 3 percent in 2015 from 2014. Risk for bare steel mains decreased from 68,185 to 65,441, or 4 percent, in 2015 from 2014. As such, it appears that CPG made progress in reducing risk in 2015. The year 2015 was the first full year CPG's DSIC was in place, and the DSIC cap was set at 5.00 percent of distribution revenues. In addition, as indicated on I&E Exhibit No. 1, Schedule 3, CPG has the lowest number of leaks per mile of any Pennsylvania NGDC. For 2015, CPG's leaks per mile were more than four times lower than that of the average Pennsylvania NGDC. Therefore, at this time, there appears to be no reason to increase CPG's DSIC cap to a level higher than 5 percent.

Id. This is consistent with testimony by the Company that total risk for the UGI companies has declined. UGI-CPG witness Bell stated:

> UGI manages risk through a comprehensive Distribution Integrity Management Plan covering all companies, UGI-CPG, UGI-GD, and UGI-PNG. On a portfolio basis, total risk across the UGI Companies has in fact declined by approximately 4% in total since 2012.

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[1] Jerome D. Mierzwa is a principal and President of Exeter Associates, Inc., which specializes in providing public utility-related consulting services. Mr. Mierzwa has been employed in numerous capacities in the public utility sector since 1986 and his assignments have included revenue requirement analysis, utility class cost of service and rate design analysis, among others. He has provided testimony on more than 200 occasions in 16 states, including Pennsylvania. See OCA St. 1 pages 1-2 and App. A, thereto, for Mr. Mierzwa's full qualifications.

CPG St. 2R at 4. Company witness McAllister expressed concern that some of the specific risk statistics "may not be adequately portraying the overall gas safety progress UGI-CPG and UGI-Penn Natural Gas, Inc. are making." CPG St. 1R at 4.

The state of UGI-CPG's distribution infrastructure and rate of replacement stands in stark contrast to those of Philadelphia Gas Works, where the Commission granted a waiver of the DSIC cap. In support of that utility's request for waiver, the Commission found that the majority of PGW's system consisted of at-risk mains and that gas leaks and broken pipes were increasing markedly. Petition of Philadelphia Gas Works, Docket No. P-2015-2501500, Order at 41-42 (Jan. 28, 2016) (PGW Order). The Commission stated:

> It is undisputed in this proceeding that PGW's aging gas distribution infrastructure poses significant safety and reliability issues, and that the current pace of the Company's replacement efforts is unacceptable and potentially harmful to the public. The record reflects that 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. In addition, there has been a definite upward trend in gas leaks and broken pipes on the Company's system over the past several years. . . The Staff Report cited by PGW and I&E further describes the poor condition of PGW's distribution infrastructure and confirms the need for PGW to undertake an aggressive main replacement strategy.

Id. The Commission approved a waiver of the DSIC cap for PGW to reduce the replacement time for cast iron mains from 86 to 48 years. Id. at 10, 14. To put this in perspective, UGI-CPG is on track to replace all of its cast iron mains within 14 years and its bare steel mains within 30 years – even with a 5 percent DSIC cap. 2014 Order at 19; CPG Exh. WJM-4; OCA St. 1 at 6 (citing CPG response to OCA Set I-1). Further, UGI-CPG's percentage of at-risk cast iron and unprotected steel mains was only 17 percent of its 3,713 miles of distribution mains at the end of 2012, compared to 66 percent for PGW. 2014 Order at 8-9. The current percentage is even lower because UGI-CPG replaced more than 40 miles of main in the 2013-2015 period.[2] Id. at 17; 2016 Order at 6.

Second, there has been no showing that UGI-CPG is not able to fund the expenditures necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service without a DSIC that is higher than 5 percent. Instead, the Company states that it might decide to file a base rate case if it is not permitted to increase the DSIC cap. CPG St. 1 at 9. Significantly, UGI-CPG has not filed a base rate case since 2010. Pa. P.U.C. v. UGI Central Penn Gas, Inc., Docket No. R-2010-2214415, Order (Aug. 19, 2011).

In determining that PGW met the standard for waiver of the DSIC cap, PGW asserted that the only viable means for it to accelerate infrastructure replacement was for the Commission to authorize the Company to increase its DSIC to 7.5 percent to allow recovery of an additional $11 million. PGW contended that any delay in recovery of the full $11 million per year would "have a negative effect on the Company's cash flow, which could erode its financial indicators and risk the financial health of the Company." PGW Order at 14 (citing PGW M.B. at 16-17). UGI-CPG makes no similar showing; indeed, its witness stated that the Company can "continue to meet its obligation to provide safe and reliable service to its customers" whether or not the DSIC cap is increased to 10 percent. OCA St. 1 at 6 (citing CPG response to OCA-I-1). The Company has other means of funding its accelerated infrastructure investment. Waiver of a statute should be a last resort when a utility has exhausted other cost recovery mechanisms.

UGI-CPG argues, however, that it should still meet the standard for waiver because, all else being equal, a 5 percent DSIC will not allow the Company to delay filing a base rate case. CPG St. 1R at 3. Company witness McAllister states:

[2] Assuming that CPG replaced the "base line" miles of 15.9 miles per fiscal year in 2013, 13.9 miles in 2014, 16.9 in 2015 (15.9+13.9+16.9 = 46.7). 2014 Order at 17.

> I believe UGI-CPG's situation, *i.e.* a utility facing significant investments reflected in its Commission-approved LTIIP which are of such a scale that neither a five percent DSIC nor overearnings from other operations are likely to defer the need for base rate relief triggered by the LTIIP-related revenue requirements, is one which the General Assembly intended to address though [sic] its Act 11 reforms to the traditional rate making process by giving the Commission the authority to increase the initial DSIC cap above five percent.

Id. The Company adds that avoiding base rate cases reduces the costs passed on to customers. CPG St. 1 at 10. Nothing in the language of Act 11 or the DSIC cap waiver provision, however, addresses the time between rate cases or reduction of rate case expense. OCA St. 1S at 4; OSBA St. 2 at 3, 6. The standard for waiver is that the DSIC cap can only be increased above the statutory limit of 5 percent "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1). Arguably, every utility could state that increasing the DSIC rate "might potentially" extend the time between base rate cases; there must be more to establish that an increase to the DSIC rate is just and reasonable. OCA St. 1 at 7; see also OSBA St. 2 at 10.

UGI-CPG also argues that the OCA makes the standard for waiver too hard for an investor-owned utility to meet because it will always have an alternative way to recover LTIIP-approved costs – by filing serial base rate cases. CPG St. 1R at 8. At the outset, it should be difficult to meet the standard, as the 5 percent cap is a critical consumer protection of the statute. To remove this protection, the utility must demonstrate that base rate relief and a 5 percent DSIC will not allow the utility to ensure and maintain adequate and reliable service. The statutory 5 percent cap reflects the General Assembly's determination of the appropriate balance between utility's opportunity to automatically recover DSIC-eligible costs between base rate cases and the customer protections of base rate review. OCA St. 1 at 6; OSBA St. 1 at 9-10; 66 Pa. C.S. § 1358(a)(1).

Moreover, UGI-CPG is not in a position of filing serial base rate cases. The Company has not filed a base rate case since 2010. Even if UGI-CPG chooses to file base rate cases more frequently going-forward, the frequency of filings cannot be definitively tied to any incremental amount of DSIC-eligible costs that exceed the 5 percent cap between base rate cases. Company witness McAllister acknowledged that there are other drivers for base rate case filings:

> Even if we assumed that the DSIC could recover every dollar associated with DSIC eligible investment and there was no DSIC cap at all, periodic base rate relief would still be needed to address the other increasing costs experienced by the Company. The DSIC does not cover many categories of the Company's operating expenses and other capital expenditures, which can only be addressed through a base rate proceeding.

CPG St. 1R at 10-11. Similarly, OCA witness Mierzwa stated:

> Numerous economic and financial factors together determine the frequency with which CPG, and other utilities, must file 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. As a result, there is no way of knowing whether the increase in the DSIC rate cap will change the timing of CPG's future rates filings.

OCA St. 1 at 7; see also OSBA St. 1 at 11.

Further, UGI-CPG has never utilized a fully forecasted rate year (FFRY). That tool, which was also established by Act 11, would allow the Company to reflect projected plant in service, including forecasted DSIC-eligible plant additions, in base rates. 66 Pa. C.S. § 315(e). OSBA witness Knecht identified other information supporting the conclusion that UGI-CPG has not satisfied the statutory standard for waiver. He provided data showing growth in loads and customer count since CPG's most recent base rate case. OSBA St. 1 at 12-13, Table IEc-2; 2016 Order at 6. In addition, UGI-CPG indicated that the Company has undertaken significant cost reduction efforts over the same period. Id. at 13 (citing CPG response to OSBA-I-6).

For these reasons, the OCA recommends that UGI-CPG's Petition be denied because the Company has not met the statutory standard for waiver of the 5 percent DSIC cap.

C. UGI-CPG Has Not Shown that the Commission Should Exercise Its Discretion to Increase the DSIC Cap to 10 Percent.

If the Commission determines that UGI-CPG meets the standard for a waiver of Section 1358(a)(1), the OCA submits that the Commission should not exercise its discretion to increase the DSIC cap to 10 percent of billed distribution revenues. There is no specific or concrete benefit to customers from authorizing a 100 percent increase to the DSIC charge on their distribution bills.

Since the passage of Act 11, the Commission has authorized one waiver of the DSIC cap, for Philadelphia Gas Works. In PGW, the Commission found that the utility met the statutory standard for waiver and exercised its discretion to allow an increase to 7.5 percent. There, the Commission accepted the Company's assertion that the incremental 2.5 percent revenue was necessary for the utility to reduce the timeline for at-risk main replacement from 86 to 48 years. PGW Order at 10, 14. The Commission declined to permanently increase the utility's DSIC cap to 10 percent. The Commission stated:

> An increase to ratepayers bills is unavoidable if PGW's DSIC is to be raised to a level that is high enough to ensure that significant progress can be made in addressing the poor condition of the Company's infrastructure. Nevertheless, we see no need to further burden customers by guaranteeing that PGW can raise its DSIC even higher—up to a maximum of 10%, or a 100% increase in the current DSIC…

PGW Order at 54-55. Subsequently, the Commission considered new information and approved a temporary increase to 8.84 percent to provide recovery of an $11.4 million, one-time undercollection caused by PGW transitioning to an annualized, levelized DSIC.[3] Petition of Philadelphia Gas Works, Docket No. P-2015-2501500, Order at 17, 26 (July 9, 2016).

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[3] The Commission required the utility to reduce the DSIC cap to the previously-approved level of 7.5 percent after two years. Id. at 27-28, 30; OCA St. 1 at 5-6.

UGI-CPG's request for a DSIC increase to 10 percent, in contrast, is based on the tenuous claim that having a 10 percent DSIC cap might allow the Company to extend the time between base rate filings and, as a result, reduce rate case expense. UGI-CPG St. 1 at 10. The Company estimates that if it had a 10 percent cap, it could fully recover its eligible infrastructure investment through the DSIC for an additional 15 months (October 2017 versus July 2016). UGI-CPG Exh. WJM-3. The Company concedes, however, that a higher DSIC cap may have no impact at all on the timing of filing and does not commit to any stay out. CPG St. 1R at 12; see OCA St. 1 at 8.

> [M]ultiple factors, many beyond UGI-CPG's control, affect its future earnings and costs. Thus, as OSBA and OCA are doubtless aware, it is difficult to predict with certainty when future base rate filings will be made.

CPG St. 1R at 12. Further, the Company has the ability to extend the time between base rate cases by 12 months by using the FFRY mechanism. OSBA witness Knecht estimated that at UGI-CPG's current level of spending, a 5 percent cap would provide roughly 18 to 26 months of DSIC recovery. OSBA St. 1 at 11-12, Table IEc-1. Use of a FFRY increases this estimate to 30 to 36 months. Id. The goal of extending the time between rate cases, thus, can be accomplished without increasing the DSIC cap by 5 percent.

Another reason UGI-CPG cites for increasing the DSIC cap to 10 percent is that it will "forego" approximately $3 million worth of DSIC revenue by October 1, 2017 without a 5 percent increase to the DSIC cap. CPG St. 1 at 9; CPG Exh. WJM-3. To be clear, the only amount that the Company will actually "forego" is the depreciation and return on its $3 million (above the 5 percent DSIC cap) – not the full $3 million. In the next base rate case, the depreciated original cost will be included in rate base and the Company will realize the return of and the return on its investment. 66 Pa. C.S. § 1358(b). Further, the failure to "fully" recover its DSIC-eligible investment through September 2017 is not a persuasive reason to increase the

DSIC cap by 5 percent. CPG St. 1 at 9, 11. The purpose of the DSIC is not to eliminate all regulatory lag. Rather as stated in the statute and recognized by the Commission, the purpose is to provide an additional tool for "timely" recovery, *i.e.* reduce regulatory lag.[4] Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Final Implementation Order at 4, 58 (Aug. 2, 2012); 66 Pa. C.S. § 1350 et seq. Indeed, there are benefits to regulatory lag. OCA witness Mierzwa explained:

> The delay in establishing new rates through a traditional base rate case provides utilities with a greater incentive to control costs between rate cases.

OCA St. 1S at 4-5.

Single-issue surcharge authority, even where the General Assembly has specifically authorized it, should be used cautiously, as it imposes additional burdens on ratepayers. The fact is that UGI-CPG has not increased its base rates in 5 years or availed itself of the FFRY mechanism of Act 11. 66 Pa. C.S. § 315(e). Accordingly, and for the additional reasons discussed above, the Company has not shown that it is just and reasonable for the DSIC rate to increase up to 10 percent. 66 Pa. C.S. § 1301.

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[4] Lag is actually built into the statutory DSIC calculation because the utility can recover costs only after the funds have been invested. 66 Pa. C.S. § 1357(a)(1)(ii). This lag will exist regardless of the DSIC cap.

V. CONCLUSION

The 5 percent 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 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). UGI-CPG concedes that the waiver may or may not have any effect on the frequency of its rate case filings. For all of the reasons discussed above, the Company has not met the statutory standard for waiver, nor shown that increasing the DSIC rate up to 10 percent is just and reasonable.

Respectfully submitted,

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Dated: September 22, 2016

221007

OCA Proposed Findings of Fact

1. UGI-CPG has made progress in reducing risk with a DSIC capped at 5 percent. OCA St. 1R at 2.

2. The year 2015 was the first full year CPG's DSIC was in place, and the DSIC cap was set at 5 percent of distribution revenues. OCA St. 1R at 2.

3. CPG has the lowest number of leaks per mile of any Pennsylvania NGDC. OCA St. 1R at 2.

4. For 2015, CPG's leaks per mile were more than four times lower than that of the average Pennsylvania NGDC.

5. On a portfolio basis, total risk across the UGI Companies has declined by approximately 4% in total since 2012. CPG St. 2R at 4.

6. UGI-CPG is on track to replace all of its cast iron mains within 14 years and its bare steel mains within 30 years – even with a 5 percent DSIC cap. CPG Exh. WJM-4; OCA St. 1 at 6 (citing CPG response to OCA Set I-1).

7. Numerous economic and financial factors together determine the frequency with which CPG, and other utilities, must file 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. OCA St. 1 at 7; see also OSBA St. 1 at 11.

8. There has been growth in UGI-CPG's loads and customer count since the Company's most recent base rate case. OSBA St. 1 at 12-13, Table IEc-2; 2016 Order at 6.

9. The Company has undertaken significant cost reduction efforts since its last base rate case. OSBA St. 1 at 13 (citing CPG response to OSBA-I-6).

10. The Company estimates that if it had a 10 percent cap, it could fully recover its eligible infrastructure investment through the DSIC for an additional 15 months (October 2017 versus July 2016). UGI-CPG Exh. WJM-3.

11. UGI-CPG does not commit to any stay out if the DSIC cap is increased above 5 percent. CPG St. 1R at 12; see OCA St. 1 at 8; CPG St. 1R at 12.

12. At UGI-CPG's current level of spending, a 5 percent cap would provide roughly 18 to 26 months of DSIC recovery. OSBA St. 1 at 11-12, Table IEc-1. Use of a FFRY increases this estimate to 30 to 36 months. Id.

OCA Proposed Conclusions of Law

1. UGI-CPG's DSIC rate must be just and reasonable. 66 Pa. C.S. § 1301.

2. The burden of proving that a DSIC rate of up to 10 percent is just and reasonable is on UGI-CPG. 66 Pa. C.S. § 315(a).

3. The burden of proving that waiver of the statutory 5 percent DSIC cap is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" is on UGI-CPG. 66 Pa. C.S. § 1358(a)(1).

4. If UGI-CPG meets this burden, the Commission has discretion whether or not to grant the waiver. 66 Pa. C.S. § 1358(a)(1).

5. UGI-CPG has failed to demonstrate that an increase to 10 percent is necessary and therefore, no waiver of the DSIC cap can be granted. 66 Pa. C.S. §§ 1358(a)(1).

Appendix C

OCA Proposed Ordering Paragraphs

IT IS HEREBY ORDERED THAT:

1. UGI-CPG's request to increase the DSIC cap to 10 percent is denied.