



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Jessica R. Rogers

jrogers@postschell.com
717-612-6018 Direct
717-731-1985 Direct Fax
File #: 153583

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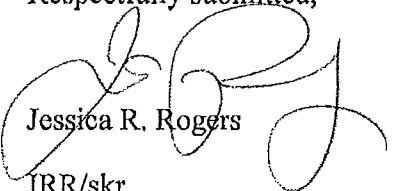
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**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:

Enclosed please find the Main Brief of UGI Penn Natural Gas, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,


Jessica R. Rogers

JRR/skr
Enclosures

cc: Honorable Angela T. Jones
Certificate of Service

CERTIFICATE OF SERVICE

**UGI Penn Natural Gas, Inc.
(Docket No. P-2016-2537594)**

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 § 1.54 (relating to service by a participant).

VIA E-MAIL AND/OR FIRST CLASS MAIL

Erin L. Gannon
Darryl Lawrence
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

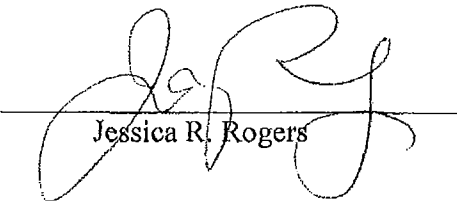
Steven C. Gray
Office of Small Business Advocate
Commerce Building
300 North Second Street, Suite 202
Harrisburg, PA 17101

Carrie B. Wright
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

Jerome Mierzwa
Exeter Associates, Inc.
10480 Little Patuxent Parkway, Suite 300
Columbia, MD 21044

Robert D. Knecht
Consultant for OSBA
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140

Date: September 22, 2016



Jessica R. Rogers

**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 : Docket No. P-2016-2537594
Distribution Revenues and Approval to :
Increase the Maximum Allowable DSIC to :
10% of Billed Distribution Revenues :

**MAIN BRIEF OF
UGI PENN NATURAL GAS, INC.**

TO ADMINISTRATIVE LAW JUDGE ANGELA T. JONES:

Mark C. Morrow (ID # 33590)
Danielle Jouenne (ID # 306839)
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Phone: 610-768-3628
Fax: 610-992-3258
E-mail: morrowm@ugicorp.com
E-mail: jouenned@ugicorp.com

David B. MacGregor (ID # 28804)
Jessica R. Rogers (ID # 309842)
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dmacgregor@postschell.com
E-mail: jrogers@postschell.com

Post & Schell, P.C.

Attorneys for UGI Penn Natural Gas, Inc.

Date: September 22, 2016

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I. BACKGROUND

On February 14, 2012, Act 11 of 2012 (“Act 11”) was signed into law. Act 11 amended Chapters 3, 13 and 33 of the Public Utility Code to “provide an additional mechanism for a distribution system to recover costs related to the repair, improvement and replacement of eligible property.” 66 Pa.C.S. §1350. Specifically, Act 11:

- Defines certain “eligible property;”¹
- Authorizes a process for utilities to submit a long-term infrastructure improvement plan (“LTIIP”) specifying, amongst other things, an “initial schedule for the planned repair and replacement of eligible property” for Commission approval if the plan is “adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service,” 66 Pa.C.S. §1352(a)(6) and (7);
- Authorizes the Commission, upon petition and after notice and an opportunity to be heard, to approve a distribution system improvement charge (“DSIC”) “to 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.” *See* 66 Pa.C.S. §1353-1357;² and
- Under a section captioned “Consumer protections”, amongst other things:
 - authorizes the Commission, upon petition, to authorize DSICs in excess of five percent (5%) “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service,” 66 Pa.C.S. §1358(a)(1);

¹ For natural gas distribution companies such as UGI Penn Natural Gas, Inc. (“UGI-PNG” or the “Company”) eligible property is defined in 66 Pa.C.S. §1351(2).

² On August 2, 2012, the Commission issued its Final Implementation Order establishing procedures and guidelines necessary to implement Act 11 at Docket No. M-2012-2293611. *See Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Order entered Aug. 2, 2012) (“*Final Implementation Order*”).

- provides for the reset of the DSIC to zero “as of the effective date of new base rates that provide for the prospective recovery of the annual costs previously recovered under the distribution system improvement charge” or “if, in any quarter ... the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the distribution system improvement charge,” 66 Pa.C.S. §1358(b);
- requires the DSIC to be “applied equally to all customer classes as a percentage of each customer’s billed revenues” 66 Pa.C.S. §1358(d)(1); and
- establishes audit and reconciliation rules. 66 Pa.C.S. §1358(e).

Act 11 provides an “alternative mechanism” of cost recovery to base rate proceedings where all costs, including costs not related to DSIC-eligible investments, are reviewed over a defined period of time, and rates are set which are generally not subject to adjustment to reflect changes, including incremental capital investments, between base rate proceedings.

UGI-PNG filed its petition seeking approval of its LTIIP with the Commission on December 13, 2013 at Docket No. P-2013-2397056. The LTIIP set forth the Company’s plans to repair and replace distribution infrastructure for the years 2014 through 2018. Concurrent with its LTIIP, UGI-PNG also filed a petition for approval to implement a DSIC. The filings were made pursuant to 66 Pa.C.S. § 1352, 1353 and the Commission’s *Final Implementation Order*.

By Order entered September 11, 2014, the Commission approved UGI-PNG’s LTIIP and DSIC, subject to refund pending the resolution of certain outstanding DSIC-related issues raised by the Office of Consumer Advocate (“OCA”), and assigned the proceeding to the Office of Administrative Law Judge. *See Petition of UGI Penn Natural Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of UGI Penn Natural Gas, Inc. for*

Approval of a Distribution System Improvement Charge, Docket P-2013-2397056 (Opinion and Order entered September 11, 2014) (“*UGI-PNG Initial DSIC*”).³

By subsequent Order entered July 8, 2015, the Commission approved the remaining outstanding issues associated with UGI-PNG’s DSIC. *See Petition of UGI Penn Natural Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2013-2397056 (Opinion and Order entered July 8, 2015).

Consistent with the Commission’s September 11, 2014 Order at Docket No. P-2013-2397056, on October 1, 2014, UGI-PNG filed Supplement No. 33 to UGI Penn Natural Gas, Inc. Tariff Gas – Pa. P.U.C. No. 8, implementing a DSIC for bills rendered on or after October 1, 2014. UGI-PNG’s initial DSIC was set at 0.0% of distribution revenues, consistent with the Company’s proposal in its DSIC petition and as required by the UGI Settlement Agreement at Docket No. C-2012-2308997. On April 1, 2015, the Company began charging its first non-zero DSIC. As of April 1, 2016, the DSIC reached the 5% revenue cap, and thus, absent Commission approval of a DSIC cap increase above 5%, pursuant to 66 Pa.C.S. §1358(a)(1), UGI-PNG’s DSIC can no longer “provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve, or replace eligible property[.]” 66 Pa.C.S. §1353(a), pursuant to its Commission-approved LTIIIP.

On February 29, 2016, the Company filed a petition to modify its LTIIIP at Docket No. P-2013-2397056. In light of changing regulatory requirements, as well as the identification of additional necessary work, the Company determined that its projected spending had increased

³ The OCA filed a petition for review with the Commonwealth Court on specific tax treatment associated with the DSIC calculation, however the petition applicable to UGI-PNG was stayed by the Commonwealth Court pending the outcome of earlier appealed cases on the same topic. On November 3, 2015, the Commonwealth Court affirmed the Commission’s determination on the tax issues. *McCloskey, Acting Consumer Advocate v. Pa. PUC*, 127 A.3d 860 (Pa. Cmwlth. 2015).

significantly. As required by 52 Pa. Code § 121.5(a), any change that will increase the total cost of a utility's LTIP by more than 20% constitutes a "major modification" and requires the utility to file a petition for modification explaining and justifying the change. The Commission approved the Company's modified LTIP on June 30, 2016. See *Petition of UGI Penn Natural Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan*, Docket No. P-2013-2397056 (Order entered June 30, 2016) ("*UGI-PNG Modified LTIP*").

To continue to utilize the DSIC in support of its expanded infrastructure replacement program as set forth in its Commission-approved LTIP, UGI-PNG is seeking a waiver of the 5% cap on the DSIC rate and approval to increase the DSIC rate cap from 5% to 10% of billed distribution revenues in accordance with the provisions of 66 Pa.C.S. § 1358(a)(1).

II. PROCEDURAL HISTORY

On March 31, 2016, pursuant to Section 1358(a)(1), UGI-PNG filed its *Petition 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* ("DSIC Waiver Petition"). The DSIC Waiver Petition seeks waiver of the DSIC rate cap of 5% of billed distribution revenues and approval to increase the maximum allowable DSIC from 5% to 10% of billed distribution revenues, and included *pro forma* tariff pages for the proposed increase in the DSIC cap from 5% to 10% of billed distribution revenues. The DSIC Waiver Petition also sought implementation of the waiver and increase effective July 1, 2016, subject to hearing and refund, in order to allow the DSIC to continue being utilized for ongoing work, because UGI-PNG had already reached the 5% statutory cap.

On April 20, 2016, the OCA filed an Answer, and a Notice of Intervention and Public Statement to the Petition. Also on April 20, 2016, the Office of Small Business Advocate ("OSBA") filed an Answer, Notice of Intervention, and Notice of Appearance. On May 6, 2016,

the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance.

A prehearing conference was held before Administrative Law Judge Angela T. Jones (the "ALJ") on June 17, 2016, where a procedural schedule was established. The ALJ issued Prehearing Orders on June 21, July 27, and August 25, 2016. Pursuant to the procedural schedule, UGI-PNG, I&E, OCA and OSBA filed direct, rebuttal and surrebuttal testimonies.⁴ A hearing was held on September 8, 2016, to allow the parties to cross-examine certain witnesses and to move their respective testimony and exhibits into the record. The ALJ issued an order accepting a late filed exhibit on September 12, 2016.

UGI-PNG submits this Main Brief in accordance with the procedural schedule.

III. LEGAL STANDARD

As the petitioner or moving party, UGI-PNG bears the burden of proof in this proceeding. Section 332(a) of the Public Utility Code requires the proponent of a rule or order "to bear the ultimate burden of persuading the Commission, by a preponderance of substantial evidence, that the relief sought is proper and justified under the circumstances." 66 Pa.C.S. § 332(a); *Motheral, Inc. v. Duquesne Light Co.*, 2001 Pa. PUC LEXIS 4 at 9; citing *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1954). A "preponderance of the evidence" means that one party must present evidence which is more convincing by even the smallest amount, than the evidence presented by an opposing party. *See Se-Ling Hosiery*. Substantial evidence is "relevant evidence that a reasonable mind may accept as adequate to support a conclusion: more is required than a mere

⁴ The DSIC Waiver Petition included the direct testimony of Mr. William J. McAllister on behalf of UGI-PNG, with supporting exhibits. The Company also filed the testimony of Mr. Hans G. Bell as part of its rebuttal case. Testimony was filed by Mr. Sunil R. Patel on behalf of I&E, Mr. Robert D. Knecht on behalf of the OSBA, and Mr. Jerome D. Mierzwa on behalf of the OCA.

trace of evidence or a suspicion of the existence of a fact sought to be established.” *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a petitioner has met its burden by a preponderance of substantial evidence, the fact finder must then determine whether a respondent has submitted evidence of co-equal value or weight in order to counter or refute the petitioner's case. If a respondent has provided co-equal evidence in response to the petitioner’s case, the burden of proof cannot be deemed to have been satisfied unless the party bearing the burden presents additional evidence causing its position to be supported by a preponderance of the evidence. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983). Thus, with competing evidence, a petitioner must meet its burden of proof by a preponderance of substantial evidence, based on the overall weight of the evidence.

IV. SUMMARY OF ARGUMENT

Act 11 provides the Commission with the discretion to both authorize a DSIC capped at 5% and, upon petition, to increase the DSIC rate cap above 5%. The specified statutory standard for the initial DSIC, waiver of the 5% DSIC cap, and approval of the LTIP are identical: “to ensure, and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa.C.S. § 1352(a)(6) and (7) (LTIP); 66 Pa.C.S. §1353(a) (DSIC); 66 Pa.C.S. §1358(a)(1) (waiver). To be eligible for such a waiver, UGI-PNG must demonstrate that it has accelerated infrastructure replacement work that meets the Act 11 standard, and that in undertaking such an acceleration it cannot effectively utilize the DSIC mechanism at the 5% rate cap.

A Commission-approved LTIP reflects a Commission determination that a particular level of accelerated investment in DSIC-eligible property will ensure and maintain adequate, efficient, safe, reliable and reasonable service. A Commission-approved DSIC reflects the costs associated with implementing that LTIP. The Commission must determine under a petition

filed pursuant to 66 Pa.C.S. §1358(a)(1) whether, under the facts and circumstances applicable to the petitioning utility, the utility should achieve more timely recovery of its DSIC-eligible costs through an increase in the DSIC cap, where the costs are associated with the accelerated capital investment in DSIC-eligible property undertaken pursuant to the Commission-approved LTIP. In this instance, the only alternative available to the Company will require the utility to seek cost recovery through serial base rate proceedings, which come at a great expense and administrative burden.

OSBA and OCA argue that the standard for waiver of the DSIC cap is more narrow than the standard for establishing an LTIP or DSIC, even though the specified statutory standards are identical. For OSBA and OCA to prevail, they must demonstrate that the identical statutory language in Act 11 that sets the standard for the LTIP, the initial DSIC, and the waiver of the DSIC cap has fundamentally different meanings. This interpretation defies the applicable standards of statutory construction and logic, and should be rejected in this proceeding.

The Commission has the authority to waive the five percent DSIC cap, and UGI-PNG has met the standard for waiver to increase the DSIC cap because it has demonstrated compelling reasons for doing so. The Commission has already found, through its approval of the Company's modified LTIP, that its DSIC-eligible projects are necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Moreover, the Company has shown that the projects in the Commission-approved LTIP have caused the Company to exceed the DSIC at the current cap of 5% of billed distribution revenues. Therefore, the DSIC at the 5% cap is insufficient to permit timely recovery of the Company's incremental costs associated with its infrastructure repair and replacement program. UGI-PNG has undertaken a significant, long-term distribution system infrastructure replacement program that is focused on replacing cast

iron and bare steel pipe, and meeting its other regulatory and service obligations. UGI-PNG will maintain its accelerated level of infrastructure replacement in the future to ensure the continued safety of its system in order to meet its obligations under Section 1501 of the Public Utility Code, but has shown, under its current circumstances, that the scale of its investment in DSIC-eligible property will accelerate the need for base rate relief.

I&E supports the Company's repair and replacement efforts as identified in the modified LTIP, and supports an increase in the DSIC cap in this proceeding to 7.5%, because it will support the Company in undertaking numerous necessary infrastructure replacement projects that will ensure safe and reliable service to UGI-PNG customers. The OSBA and OCA do not support the Company, based on an erroneous and overly narrow standard that would make the use of the waiver provision in Act 11 virtually impossible. In this Main Brief, UGI-PNG explains why OSBA and OCA's arguments are without merit and should be rejected.

UGI-PNG's investments have already caused the Company to reach the 5% DSIC cap. As of April 1, 2016, no new infrastructure repair and replacement work is being recovered through the DSIC. The current 5% DSIC rate cap is insufficient to support the DSIC-eligible investment the Company identified in its LTIP and modified LTIP. Increasing the DSIC rate cap to 10% would allow UGI-PNG to continue its aggressive replacement plan while possibly reducing the frequency of base rate cases. However, at its accelerated rate of DSIC-eligible work, even a 10% cap will not allow the Company to avoid base rate proceedings entirely. UGI-PNG seeks to strike the appropriate balance in this proceeding between its reliance on the DSIC and the use of future base rate cases to ensure its financial integrity while meeting its service obligations to its customers both now and into the future.

A waiver to increase the statutorily established 5% DSIC rate cap may be granted when a utility demonstrates that the initial 5% DSIC rate cap is insufficient to support its current and planned levels of plant replacement and DSIC-eligible spending. A utility that meets this standard should be granted waiver of the DSIC revenue cap regardless of whether it could support its infrastructure investment through the filing of base rate cases. A standard that would deny a waiver if the utility can support its infrastructure investments through base rate cases would nullify the waiver provision that is explicitly contained in Act 11.

For the reasons explained in this Main Brief, UGI-PNG respectfully requests that the ALJ approve its request to increase the DSIC rate cap to 10% of billed distribution revenues and reject the various arguments for disallowing the proposed increase or limiting it to less than the requested 10% offered by the other parties in this proceeding.

V. ARGUMENT

A. UGI-PNG'S PETITION FOR WAIVER TO INCREASE THE DSIC RATE CAP TO 10% OF BILLED DISTRIBUTION REVENUES SHOULD BE GRANTED.

1. The appropriate standard for waiver of the DSIC rate cap is the standard proposed by UGI-PNG in this proceeding.

Waiver of the DSIC rate cap is appropriate where a utility has identified necessary infrastructure repair and replacement projects in its LTIP, the Commission has approved the LTIP, and the DSIC rate cap at the statutorily established 5% of billed distribution revenues is insufficient to allow the Company to recover revenues associated with those LTIP projects. In this proceeding, UGI-PNG has shown that a waiver of the 5% DSIC rate cap is insufficient, due to the scale of its accelerated investment in DSIC-eligible property pursuant to its Commission-approved LTIP, which has caused the Company to hit the initial DSIC rate cap, thereby

depriving UGI-PNG of the ability to receive timely cost recovery on incremental DSIC-eligible investments.

The standard applicable in this proceeding is established in the plain language of Act 11. Section 1358(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1358(a)(1), governs waiver of the DSIC. Section 1358(a)(1) provides:

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.*

(emphasis added). The language in Section 1358(a)(1) is identical to the language used in Section 1353, 66 Pa.C.S. § 1353, which allows a utility to petition the Commission for approval to charge a DSIC. Section 1353 provides:

[A] utility may petition the commission, or the commission, after notice and hearing, may approve the establishment of a distribution system improvement charge to 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.*

(emphasis added). Further, this language matches the language provided in Section 1352, 66 Pa.C.S. § 1352, for approval of the LTIP. Section 1352(a)(6) and (7) provide:

(6) The manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will *ensure and maintain adequate, efficient, safe, reliable and reasonable service.*

(7) If the plan is not adequate and sufficient to *ensure and maintain adequate, efficient, safe, reliable and reasonable service*, the commission shall order a new or revised plan.

(emphasis added). The same statutory standard should apply where identical language is used by the General Assembly. The Commission recently found that the projects in UGI-PNG's modified LTIP met the standard in Section 1352. *UGI-PNG Modified LTIP*, p. 6. The projects in the modified LTIP, which are driving UGI-PNG's DSIC spending and have caused the

Company to exceed the 5% DSIC rate cap, are part of a plan that will ensure and maintain adequate, efficient, safe, reliable, and reasonable service. A consistent interpretation of the identical statutory language contained in Section 1358(a)(1) must conclude that the spending that results from an LTIP that ensures and maintains adequate, efficient, safe, reliable, and reasonable service is sufficient to support a request to increase the DSIC rate cap to recover spending on the projects in that plan. Any other conclusion would be inconsistent with the rules of statutory construction. *See* 1 Pa.C.S. § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”)

The OSBA and OCA have argued that a more narrow and onerous standard should be applied to the waiver provision of Act 11. They argue that because UGI-PNG has committed to making any and all replacements that are necessary in order to provide safe, reliable, adequate, efficient and reasonable gas service to its customers, regardless of whether the Commission approves the petition to waive the DSIC rate cap, the Company therefore should not be eligible for the DSIC waiver. (OSBA St. No. 1, p. 7; OCA St. No. 1, p. 6.) This argument fails to consider that identical language within a statute should be interpreted consistently. UGI-PNG’s modified LTIP was approved by the Commission on June 30, 2016. In order to approve the modified LTIP, the Commission was required by law to determine that the Company’s plan was “adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service”. As described in detail in Section V.A.2, the Company has shown that the 5% DSIC cap is insufficient to recover the costs associated with implementing a plan that the Commission has identified as being “adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service” – the same standard required for waiver of the DSIC rate cap. It

would be nonsensical for the Commission to approve the modified LTIIP and then, within a few short months, reject the petition for waiver under the exact same statutory standard. The argument advanced by the OSBA and OCA lacks merit, and will lead to inconsistent and incompatible results by the Commission.

The Commission has previously provided guidance on the appropriate standard in prior DSIC proceedings. In *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282 (Opinion and Order entered March 14, 2013) (“*Columbia DSIC*”), the Commission accepted Columbia’s past acceleration of its infrastructure repair and replacement, with no additional acceleration identified, as sufficient to meet the statutory standard established in Section 1353. Specifically, the Commission held that “the proposed DSIC will allow the Company to continue its already accelerated pace for replacing its distribution infrastructure, resulting in fewer leaks, the installation of additional safety mechanisms, and improved service to customers.” *Columbia DSIC*, pp. 42-43. From *Columbia DSIC*, it is clear that a utility may show past significant acceleration that will be maintained into the future in order to meet the statutory standard used in Sections 1352 and 1353. This same finding should apply to the identical standard in Section 1358(a)(1).

In UGI-PNG’s own modified LTIIP proceeding, the Commission affirmed that proactive efforts to address reliability issues are preferable, and meet the statutory standard in Section 1352. In approving the modified LTIIP, the Commission found:

An effective LTIIP is designed to ensure that utilities are planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure. It is preferable that utilities improve

their system to maintain reliability in a proactive manner, rather than waiting for disruptions of service and hazardous leaks to force the improvement of distribution infrastructure...The UGI Companies' proposed modified LTIIPs appear to demonstrate that their associated expenditures are reasonable, cost effective, and designed to ensure and maintain efficient, safe, adequate, reliable, and reasonable service to their customers.

UGI-PNG Modified LTIIP, p. 6. The Commission and General Assembly have sought to encourage utilities to proactively undertake expensive infrastructure replacement work through Act 11. The standard proposed by OCA and OSBA in this proceeding would require a utility to be at the point of failing in its ability to provide safe and reliable service before even a small amount of additional financial relief would be available through the waiver provision of Section 1358(a)(1). Mr. Bell described the impact of this very succinctly in his testimony:

[T]he ability to support the increased level of investment in our system as shown in the recently approved annual asset optimization plan and petition to increase...our long-term infrastructure plan, that underlying investment is certainly supported financially through an enhanced DSIC cap.

Absent the DSIC cap [increase], it becomes more financially burdensome on the company to sustain the level of investment as we have set forth in our annual asset optimization plan and long-term infrastructure improvement plans.

(Tr. 69.) In order to continue to encourage utilities to proactively address costly infrastructure repair and replacement work, and in order to be consistent with the Commission's own prior conclusions, the finding that UGI-PNG met the standard articulated in Section 1352, identical to the standard found in Section 1358, should be carried over from *UGI-PNG Modified LTIIP* into this waiver proceeding.

There is no legal basis for concluding that an additional showing is required for waiver of a DSIC rate cap under Section 1358(a)(1). The plain language of the statute is identical to Section 1352 and 1353. As shown above, in *Columbia DSIC* and *UGI-PNG Modified LTIIP*, the

Commission accepted past acceleration that would be maintained in the future as sufficient for meeting the standard in Act 11, and encouraged utilities to undertake this increased spending proactively and before safe and reliable service was threatened. Requiring an additional showing that UGI-PNG cannot possibly undertake its planned replacement projects without a DSIC waiver is not supported by the statutory language or the Commission's prior analysis, and effectively reads words into Act 11 that are simply not present. In fact, application of the standard advocated by OSBA and OCA in this proceeding to UGI-PNG's original petition for a DSIC would have required the Commission to reject the initial DSIC petition, which relied on past acceleration. The same result would have been true in *Columbia DSIC*, where the Commission found that the utility's past acceleration maintained into the future met the DSIC standard in Section 1353. Given the identical statutory language governing both the establishment of a DSIC and a waiver of the DSIC cap, the relevant inquiry is whether UGI-PNG has shown that the work identified in its modified LTIP and being performed, and recovered through the DSIC, is needed to ensure and maintain adequate, efficient, safe, reliable and reasonable service. This inquiry does not consider whether the utility may not be able to continue providing safe and reliable service without an increase, or whether other sources of funding are available.

In addition to the standard established by the Commission in the initial DSIC cases, the Commission has provided guidance on waiver of the DSIC cap in the context of a water utility's request to increase its DSIC rate prior to the enactment of Act 11. In *Pa. PUC v. Aqua Pennsylvania, Inc.*, 2009 Pa. PUC LEXIS 263, *19 (Order entered July 23, 2009) ("*Aqua*") a demonstrated need for remediation along with an increase in DSIC-eligible spending and an accelerated rate of rehabilitation and/or replacement of mains was sufficient to support the

request to increase the 5% DSIC cap. Aqua did not claim that the Company would need to reduce its improvement program without the proposed DSIC cap increase. *Id.* at *15-22. In *Aqua*, the Commission also rejected arguments that the utility could access funding from other sources as a reason for denying the DSIC cap increase. *Id.* at *15-22.

Like Aqua, UGI-PNG has recently identified additional areas of DSIC-eligible spending that it has committed to undertake in its modified LTIP. The Company remains committed to undertaking necessary improvements to its system that it has identified in its LTIP regardless of whether it has the opportunity to recover its investment through the DSIC. UGI-PNG should not be punished for its unqualified commitment to improving the safety of its system or for planning infrastructure work sufficiently in advance to ensure that its customers continue to receive safe and reliable service. Instead, the Commission should consider the need for the identified work, the cost of doing that work, the capabilities of the utility to perform in accordance with LTIP plans, and the impact an increase in the DSIC will have on customers.

The Commission has also indicated the relevant standard applicable in a petition for waiver with regard to a city-owned gas utility's request under Act 11. An increase in the DSIC rate cap is proper when the current state of a utility's distribution infrastructure requires remediation at such a level that DSIC-eligible spending would exceed the current 5% rate cap. *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, p. 41 (Opinion and Order entered January 28, 2016) ("*PGW*"). In *PGW*, the Commission determined that the Company was seeking to accomplish infrastructure replacement work that was necessary to ensure safe and reliable service to customers. *Id.* at p. 41. The Commission agreed with *PGW* that it needed to "undertake an aggressive main

replacement strategy” and recognized that waiver of the statutory 5% DSIC rate cap offered “the most cost-effective and least problematic means of ensuring that the Company can obtain this additional funding in a timely fashion.” *Id.* The Commission’s analysis indicates that it will increase the 5% DSIC cap, even if a DSIC cap increase is not the *only* means of funding the utility’s accelerated replacement, when a DSIC increase is the *most efficient* means for funding accelerated replacement.

OSBA and OCA assert that UGI-PNG should use base rate proceedings to recover additional DSIC-eligible funds, and should only be granted a waiver if the Company cannot continue to provide safe and reliable service or cannot access capital markets in order continue funding its projects. (OSBA St. No. 1, p. 7; OCA St. No. 1, p. 6; Tr. 103-105.) This standard should be rejected because it is contrary to the Commission’s prior rulings in *Aqua* and *PGW*. In both cases, the Commission acknowledged that other sources of funding were available, but instead found that a DSIC increase was the most viable option for funding increased infrastructure investments. *Aqua*, 2009 Pa. PUC LEXIS at *19-*21; *PGW* at 43-44. The argument from OSBA and OCA, which concludes that because UGI-PNG can file rate cases to support its capital investment a DSIC increase is unnecessary, is also inconsistent with the Commission’s decisions in *Aqua* and *PGW*. Although both *Aqua* and *PGW* could have filed rate cases to support their infrastructure investments, the Commission did not consider that as a relevant factor in the Commission’s determination to increase the DSIC cap.

OSBA’s and OCA’s proposed standard for waiver of the DSIC also should be rejected because it would nullify the waiver provision contained in Act 11. Mr. Knecht admitted that under his proposed standard, it was very unlikely that an investor owned utility could ever utilize the waiver provision. (OSBA St. No. 1-S, p. 4.) Mr. Knecht could not identify any investor

owned utility in the United States which could meet his standard. (Tr. 104-105.) Further, as described previously, if this standard were applied to the identical language contained in Section 1353, then no utility could implement a DSIC in the first place, because all investor owned utilities can support their investment in replacing aging infrastructure through the filing of base rate cases rather than through the DSIC mechanism. *See* 66 Pa.C.S. § 1308. As a result, no utility would be able to demonstrate that it could not undertake necessary distribution infrastructure replacement without a 5% DSIC or a DSIC cap increase. Such a standard would effectively write both the implementation of a DSIC and the DSIC cap waiver provision out of existence, which is contrary to the principles of statutory interpretation. *See* 1 Pa.C.S. § 1921(a) (“every statute shall be construed, if possible, to give effect to all its provisions”); § 1922 (“the General Assembly intends the entire statute to be effective”).

The standard proposed by OSBA and OCA would require a utility to be at risk of being unable to provide safe and reliable service in order to receive a waiver of the DSIC rate cap. UGI-PNG is under a statutory mandate to provide safe and reliable service, pursuant to Section 1501 of the public utility code. Section 1501 provides:

Every public utility shall furnish and *maintain adequate, efficient, safe, and reasonable service and facilities*, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay.

(emphasis added). If the Company must be at the point of being unable to provide safe and reliable service in order to receive waiver of the DSIC cap, then the Company will be in violation of Section 1501. A legal standard that requires a utility to be in violation of one part of the Public Utility Code in order to access funding provided by a different part of the Public Utility

Code – funding that is intended to avoid exactly the kind of customer harms that Section 1501 addresses – is untenable.

The position of OSBA and OCA, if adopted, would effectively establish an “absolute necessity” standard, where the waiver would not be available unless there are “extraordinary circumstances” such that a violation of Section 1501 either had occurred or was imminent. The absolute necessity standard has been rejected by the Commonwealth Court, as unworkable and dangerous. *See Hess, et. al. v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014) (“Not only would this [absolute necessity] approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.”). OSBA and OCA’s proposed standard is inconsistent with the legislative intent of both Act 11 and Section 1501 of the Public Utility Code. These statutes seek to encourage proactive utility efforts that avoid situations that endanger customers. The position taken by OSBA and OCA would require the Commission to wait until a utility is on the brink of failing to meet its basic obligation to provide safe and reliable service before it could provide minor, incremental financial relief. Clearly, the General Assembly did not intend such an absurd and unreasonable result. 1 Pa.C.S. § 1922(1) (stating that it is presumed “[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable”).

I&E has supported UGI-PNG’s request in this proceeding. Much like the Company, I&E has advocated a case by case analysis that considers the underlying work the Company seeks to support. (Tr. 78.) I&E focuses predominately on the risk profile associated with cast iron and bare steel mains. (I&E St. No. 1, pp. 10-11.) As a result, I&E supports an increase in the DSIC rate cap up to 7.5%, but does not believe that the Company has documented the necessary support for a 10% DSIC rate cap. (I&E St. No. 1, p. 12.)

While I&E's standard is certainly broader than the impossible standard advocated by OCA and OSBA in this proceeding, I&E's standard fails to take into account a significant portion of the Company's DSIC-eligible replacement work. (UGI-PNG St. No. 2-R, pp. 5-6.) Much of the DSIC-eligible work, all of which furthers the Company's ability to provide safe and adequate service to its customers both now and into the future, does not directly impact the Company's risk profile related to cast iron and bare steel mains. For instance, I&E's standard fails to consider the Company's recent commitment in its modified LTIIP to further accelerate its DSIC-eligible spending, because the identified projects do not necessarily impact the Company's calculated risk profile even though they are mandatory to meet regulatory obligations. (UGI-PNG St. No. 2-R, pp. 5-6). These expenditures include spending associated with department of transportation projects, the movement of inside meters, and winter reliability projects that are not directly related to cast iron and bare steel pipeline replacement. There is no basis in the statute for focusing only on main replacement projects, and excluding other projects that are necessary in order to provide safe and reliable service and are DSIC-eligible, when considering whether an increase is appropriate.

UGI-PNG is aggressively replacing its aging infrastructure and addressing other mandatory regulatory infrastructure work. OSBA and OCA seek to impermissibly deprive the Company of the opportunity to exercise a power granted by the General Assembly through their overly narrow standard. That standard should be rejected, and the Commission should instead increase the DSIC rate cap where the DSIC at 5% is being rendered unusable due to the Company's accelerated pace of infrastructure improvement.

2. UGI-PNG has demonstrated that increasing the DSIC cap to 10% of billed distribution revenues is appropriate under the established standard for waiving the DSIC cap.

UGI-PNG has implemented an accelerated infrastructure replacement plan to proactively address its aging infrastructure, including cast iron and bare steel mains. (UGI-PNG St. No. 1, p. 8, UGI-PNG St. No. 2-R, p. 3.) In addition, UGI-PNG recently identified other DSIC-eligible areas of infrastructure repair and replacement that must be addressed during the remainder of its original LTIP plan period – this work has contributed to a 24.5% increase in the planned spending on DSIC-eligible plant over the remaining three years of the plan. *UGI-PNG Modified LTIP*, p. 5. This spending will allow the Company to ensure its continued ability to maintain adequate, efficient, safe, reliable and reasonable service for customers both now and into the future. The Company has used the DSIC to accomplish some of this work, but it has reached the current 5% rate cap, and can no longer use the DSIC to recover any of the spending associated with ongoing accelerated infrastructure replacement.

UGI-PNG's accelerated infrastructure improvement plan, which is reflected in its modified LTIP, is necessary in order to maintain safe and reliable service for its customers. *UGI-PNG Modified LTIP*, p. 6. UGI-PNG's distribution system is comprised of different types of pipe, including cast iron and bare steel, which are weakening significantly as they age. *UGI Initial DSIC*, pp. 39-40. Accelerated distribution infrastructure improvement supports UGI-PNG's ability to reduce the number of leaks on its system, enables it to install additional safety mechanisms, and to relocate meters that are currently located inside customers' buildings. (UGI-PNG St. No. 2-R, pp. 2-5.) All of these activities provide important safety benefits on the UGI-PNG system.

I&E supports the Company's request for a waiver, because it believes that there are important safety issues that UGI-PNG is seeking to address through its DSIC-eligible

investments. (I&E St. No. SR-1, p. 2.) Mr. Patel testified that there are still leak considerations experienced by UGI-PNG that I&E believes are being proactively addressed by the Company's DSIC-eligible work. (I&E St. No. 1, pp. 9-11.) Mr. Patel also discussed the importance of moving meters that are currently located inside houses – a category of expense that the Company has recently focused on in its modified LTIP. (Tr. 85-86.) Mr. Patel, as well as Mr. Bell on behalf of the Company, identified that the Commission's desired level of cast iron and bare steel mains on a utility system was zero percent. (Tr. 85; 71.) The Company's DSIC related work is seeking to reach that number as efficiently and expeditiously as possible.

Recognizing the need to continue to improve its infrastructure and meet regulatory obligations in order to provide safe and reliable service to customers, UGI-PNG is rapidly replacing its aging infrastructure in accordance with, and in excess of, its LTIP and Annual Asset Optimization Plans ("AAOP").⁵ (UGI-PNG Exh. WJM-4.) In addition to meeting or exceeding its original LTIP projections for infrastructure repair and replacement, UGI-PNG identified areas where it needed to significantly increase its planned investment, so much so that the Company was required to file a modified LTIP. (UGI-PNG St. No. 1, pp. 4-5.) The Company originally anticipated spending \$22.9 million per year, for a total of \$114.5 million over the five year period of the plan in DSIC-eligible plant, as indicated in the Company's original LTIP. *UGI-PNG Initial DSIC*, p. 17. UGI-PNG identified increased spending plans in its modified LTIP, and now projects that its DSIC-eligible plant expenditures for 2014 through 2018 will total approximately \$138.7 million. *UGI-PNG Modified LTIP*, p. 5. UGI-PNG plans to continue its aggressive investment in pipe replacement. (OSBA St. No. 1, p. 7; OSBA Ex. IEc-2 at OCA-I-1.)

⁵ A utility with an approved DSIC must file an AAOP. See 66 Pa.C.S. § 1356. UGI-PNG submitted its most recent AAOP on February 29, 2016. UGI-PNG's AAOP included, *inter alia*, a detailed description of the DSIC-eligible property to be repaired, replaced or improved during the twelve months ended December 31, 2016.

UGI-PNG implemented its DSIC on October 1, 2014. (UGI-PNG St. No. 1, p. 5.) Initially, the Company's DSIC was set at 0.0%, until April 1, 2015. As of April 1, 2015, UGI-PNG began to actively recover investment under the DSIC. From April 1, 2015 through April 1, 2016, the Company's DSIC gradually increased. As of April 1, 2016, the Company's DSIC reached the 5% DSIC cap, and it can no longer recover DSIC eligible investments in the DSIC. (UGI-PNG St. No. 1, p. 5, 7; UGI-PNG Exh. WJM-3.) UGI-PNG has demonstrated that it has significantly accelerated its infrastructure repair and replacement, and will continue doing so, at a level that cannot be supported by a DSIC capped at 5%.

UGI-PNG is committed to continuing the replacement of its aging distribution infrastructure, because this work is necessary in order to ensure the continued safe and reliable service that the Company provides its customers. Although the Company certainly can file a base rate proceeding, it is seeking now to establish a balance between its use of the DSIC to recover DSIC-eligible investment, and the future use of base rate proceedings. Increasing the DSIC will not allow the Company to avoid base rate proceedings indefinitely. (UGI-PNG St. No. 1-R, p. 10.) A 10% DSIC rate cap would support the Company's DSIC-eligible replacement, and would allow the Company to strike a balance between the use of the DSIC and base rate proceedings for cost recovery purposes. (UGI-PNG St. No. 1-R, p. 12.) A base rate case is a massive undertaking for UGI-PNG, which requires the scheduling of internal labor resources, as well as a significant financial commitment of hundreds of thousands of dollars. (UGI-PNG St. No. 1-R, p. 12; Tr. 52.) Base rate cases also pose a significant burden on the Commission's resources. (UGI-PNG St. No. 1, p. 10.) To the extent the DSIC provides an opportunity to decrease the need for frequent rate cases, the DSIC enhances the efficiency and

reasonableness of the service that UGI-PNG can provide, and saves the Company, and ultimately the ratepayer the cost of such a proceeding. (UGI-PNG St. No. 1, p. 10.)

The impact of the Company's proposal on customers will be minimal. Every 1% DSIC surcharge increase amounts to an additional \$0.48 per month for the typical Residential heating customer. (UGI-PNG Exh. WJM-3.) This amount, \$0.48 per month, is a much smaller monthly increase than the increase a residential customer would see in their bill if the Company were required to seek base rate relief immediately and regularly. (UGI-PNG St. No. 1-R, p. 5.) Waiving the current DSIC rate cap and increasing the DSIC rate cap to 10% is in the public interest because it will have only a small impact on UGI-PNG's customers, while allowing UGI-PNG to continue its aggressive distribution infrastructure replacement program in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service both now and into the future.

UGI-PNG has demonstrated that it has accelerated its pipeline replacement to a level that prevents it from effectively utilizing the DSIC mechanism at the current cap of 5% of billed distribution revenue. The factors identified in this section, taken together, show that UGI-PNG has satisfied the standard for waiver to increase the DSIC cap as set forth in Section 1358(a)(1) and as interpreted by Commission precedent, because the work that will be supported by the waiver is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Therefore, increasing UGI-PNG's DSIC cap to 10% of billed distribution revenues is justified.

B. OTHER PARTIES' ARGUMENTS IN OPPOSITION TO INCREASING THE DSIC TO 10% MUST BE REJECTED.

1. The Company is addressing meaningful safety and regulatory issues through its DSIC-eligible spending.

OSBA's witness has testified that the DSIC rate cap should not be waived because the infrastructure replacement work being addressed in this proceeding is a "statistical anomaly", rather than critical infrastructure replacement work. (Tr. 111.) This assertion is completely unfounded. First, Mr. Knecht acknowledged that in his review of the Company's modified LTIP, he did not identify any projects which were not necessary to ensure safe and reliable service to customers. (Tr. 99.) Further, Mr. Knecht acknowledged that he would not be qualified to undertake that sort of analysis. (Tr. 99.)

More critically, the two witnesses qualified to assess the infrastructure issues facing the UGI-PNG system agreed that the work being addressed by the Company through its modified LTIP, which would be recovered through the DSIC if the rate cap was waived, is necessary to ensure safe and reliable service both now and in the future. Mr. Patel described certain risks that the Company's system is facing at this time. These include leak rates associated with cast iron and bare steel pipe. (I&E St. No. 1, pp. 10-11.) Mr. Patel also identified the importance of the ongoing effort by the Company to move meters that are currently located inside buildings to outside locations, to avoid safety incidents that have led to serious injuries in the past. (Tr. 85-86.) Mr. Bell stated that he generally concurred with Mr. Patel's assessment of the system. (Tr. 59.) Further, both witnesses agreed that the continued presence of cast iron and bare steel mains on the system exceeds the amount preferred by the Commission. (Tr. 71; 85.)

There is simply no factual foundation for the suggestion that the Company's system is not in need of accelerated repair and replacement, or that the repair and replacement work is addressing risks that are merely the product of "statistical anomalies". The Commission found

that the projects contained in the modified LTIIP are necessary to ensure that the Company can continue to provide safe and reliable service. The DSIC rate cap waiver will allow the Company to recover costs associated with those projects. OSBA's arguments to the contrary should be rejected.

2. Increasing the DSIC cap to 10% would not circumvent any necessary consumer protection or make base rate proceedings irrelevant.

OSBA and OCA argue that increasing the DSIC cap would allow UGI-PNG to bypass the traditional ratemaking process, and would erode consumer protections provided in Act 11. (OSBA St. No. 1, pp. 5-6, 8-10; OCA St. No. 1, pp. 6-8.) However, no party has presented evidence that implementing a 10% DSIC will allow the Company to evade the base rate case process, and UGI-PNG has provided testimony that the very opposite is true. Further, it is clear that customer safeguards will continue in effect if the Company's petition is granted.

The concern that the traditional rate making process will be undermined is unjustified. UGI-PNG has stated that, even at a 10% DSIC rate cap, regular base rate cases will be necessary to reflect the significant investment in infrastructure. (UGI-PNG St. No. 1-R, p. 10.) As UGI-PNG showed in its testimony, this proceeding is seeking to find a balance that allows the Company to recover some investment on its accelerated spending while reducing the administrative burden and cost associated with serial base rate proceedings. (UGI-PNG St. No. 1-R, pp. 12, 15.) Utilizing the DSIC to support a schedule of intermittent base rate proceedings will not bypass the traditional ratemaking process.

The Commission has previously addressed the issue of what length of time between base rate cases would strike a reasonable balance between the use of the DSIC and the traditional ratemaking process. The Commission determined that a period of approximately two years was not an excessive period of time between rate cases. *Aqua*, 2009 Pa. PUC LEXIS at *27-*28. In

Aqua, the Commission rejected arguments that allowing a DSIC rate cap increase would bypass the traditional ratemaking process, where the evidence showed that the utility would reach the then-current DSIC rate cap in about eighteen months, and the requested increase to the DSIC rate cap would allow the utility to go a period of slightly over two years between rate cases. *Id.* As of April 1, 2016, when UGI-PNG reached the 5% cap, the DSIC reflected plant placed in service from June 1, 2014 through February 29, 2016. The Company reached the 5% DSIC cap with less than two years of plant. Further, with the recent approval of the modified LTIP, that rate of investment will only increase in future months. Based on the level of spending reflected in the modified LTIP, UGI-PNG will reach the 10% DSIC rate cap by October 1, 2017. This short amount of time will not undermine the traditional ratemaking process.

Increasing the DSIC rate cap to 10% will provide the Company with short term financial relief, while the other existing consumer safeguards provided by Act 11 will remain in place, as required by the Commission and applied in UGI-PNG's DSIC tariff provisions. These safeguards provide sufficient and significant consumer protections. UGI-PNG must continue to reflect only DSIC-eligible property in the DSIC surcharge and must reset the DSIC to zero upon the effective date of new base rates. 66 Pa.C.S. § 1358(b)(1). The DSIC must be reset to zero if the Company's rate of return exceeds its allowable authorized return on equity in any quarter, and this will be true whether the DSIC is capped at 5% or 10%. 66 Pa.C.S. § 1358(b)(3). Critically, this customer protection ensures that the DSIC will always reflect just and reasonable rates. *See generally McCloskey, Acting Consumer Advocate v. Pa. PUC*, 127 A.3d 860 (Pa. Cmwlth. 2015). Any significant changes to the Company's LTIP must be approved by the Commission, and progress is monitored on an annual basis through the AAOP, as well as through Commission initiated reviews. The DSIC is subject to audit at intervals determined by

the Commission. 66 Pa.C.S. § 1357(a)(2). Annually, UGI-PNG must reconcile the revenue received under the DSIC with the Company's eligible costs. If revenues received from the DSIC exceed eligible costs for the reconciliation period, the over collections are refunded to customers with interest. 66 Pa.C.S. § 1358(e)(3). These safeguards will continue unaffected by an increase to the DSIC rate cap, and will ensure that customers are protected from rates that are unjust and unreasonable or from the recovery of costs that are not appropriately collected in the DSIC.

Finally, OSBA's and OCA's concerns regarding the possible extension of time between rate cases ignores the very purpose of the DSIC, which is to allow for recovery of capital investment without the time, cost and uncertainty of a base rate case. (UGI-PNG St. No. 1-S, p. 2; UGI-PNG Exh. 1-SR.) Waiver of the current 5% DSIC cap will not obviate the need for base rate cases, will not cause unjust and unreasonable rates, and will not erode the consumer protections provided by Act 11. Rather, UGI-PNG believes waiver of the 5% DISC cap and an increase to 10% will strike an appropriate right balance that maximizes benefits to customers.

3. Potential rate case savings associated with waiver of the DSIC cap supports increasing the DSIC cap to 10%.

UGI-PNG explained that a potential benefit of an increase to the DSIC rate cap would be reduced rate case costs charged to customers if UGI-PNG could avoid the need to file frequent rate cases. Other factors such as operating and maintenance expenses, non-DSIC eligible plant additions, wages, benefits and taxes will also influence the timing of a base rate case. It is certain that at the current 5% DSIC cap, the Company will need to file a base rate proceeding in the near future, and will likely be drawn into serial base rate proceedings in order to continue supporting its infrastructure replacement plans. (UGI-PNG St. No. 1-R, p. 6.) The potential savings from avoiding frequent rate cases is significant. (UGI-PNG St. No. 1, p. 10.) If the

DSIC cap is increased, dollars that would otherwise be borne by customers in base rates will be avoided.

OSBA and OCA argue that possible rate case savings are not relevant to whether the Commission should grant a waiver. This argument is at odds with the fact that rate case expense savings was a factor specifically considered by the legislature when adopting the DSIC provisions. (UGI-PNG St. No. 1-S, p. 2; UGI-PNG Exh. 1-SR.) During the legislative debate leading to the passage of Act 11, it was noted that, by adopting the DSIC, utilities would be able to avoid “full-blown, expensive, lengthy rate review cases,” thereby benefitting customers. (UGI-PNG St. No. 1-S, p. 2; UGI-PNG Exh. 1-SR.) Refusing to waive the DSIC cap where the current DSIC is inadequate to avoid frequent or serial rate cases would frustrate the legislative intent of Act 11 to reduce the frequency of base rate cases where a utility has significantly accelerated its infrastructure replacement to ensure safe and reliable service to its customers.

4. UGI-PNG should not be required to have a base rate proceeding prior to increasing the DSIC cap to 10%.

OSBA argues that the Commission should require the Company to file a base rate proceeding, rather than being allowed to waive the DSIC rate cap. OSBA has provided no meaningful grounds in support of this claim. Section 1358(a)(1) does not require a base rate proceeding within a specific window in order for the Commission to approve a petition for waiver. This is in contrast to the requirements of the DSIC itself, where certification of a base rate proceeding within the last five years is a specifically identified requirement of Section 1353(b)(4) and 1353(b)(5).

Further, as Mr. Knecht acknowledged in his testimony, the OSBA has opposed the DSIC waiver in other cases, including the Columbia Gas of Pennsylvania, Inc. DSIC Waiver proceeding at Docket No. P-2016-2521993. (OSBA St. No. 1-R, p. 4.) Mr. Knecht

acknowledged that Columbia has filed base rate cases every 12 to 24 months since 2008 in order to address its infrastructure work. (Tr. 97.) This makes it clear that having a more recent base rate proceeding would not satisfy Mr. Knecht's standard, and even if the Company were to undertake a base rate proceeding, Mr. Knecht would still recommend that the Commission reject UGI-PNG's petition.

5. OSBA's concerns regarding the interclass effects of the DSIC waiver are without merit.

OSBA alleges that waiver of the DSIC will result in interclass issues because the DSIC increase will apply on a flat basis, rather than being based on an allocated cost of service study. (OSBA St. No. 1, p. 2.) Mr. Knecht identified this as a significant problem associated with single issue rate making, (OSBA St. No. 1, p. 2), and stated that "regulators are cautious with the use of single issue ratemaking." (Tr. 95.)

The General Assembly mandated in Act 11 that utilities must apply a flat DSIC percentage equally to all rate classes. *See* Section 1358(d)(1). The Commission affirmed this in its Final Implementation Order. *See Final Implementation Order* at 46. Thus, according to Mr. Knecht's own testimony, the cautious regulators must have intended for the DSIC to apply to all customer classes equally, rather than allocating the DSIC based on a cost of service study. The instant petition proposes no change to the method by which the DSIC is allocated to customers, and Mr. Knecht's issues would need to be addressed by the General Assembly. Pursuant to the statute and the Commission's *Final Implementation Order*, no class of customer will receive a greater percentage increase under the DSIC than any other class of customer.

VI. CONCLUSION

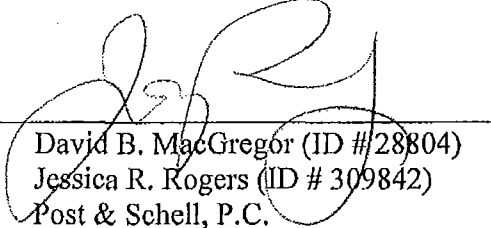
For the foregoing reasons, UGI Penn Natural Gas, Inc. respectfully requests that its Petition to Waive the DSIC Cap of 5% of Billed Distribution Revenues and to Increase the Maximum Allowable DSIC to 10% of Billed Distribution revenues be granted, and that OCA's and OSBA's arguments be rejected. UGI-PNG also respectfully requests approval to implement the *pro forma* tariff supplement as filed with its Petition.

Respectfully submitted,

Mark C. Morrow (ID # 33590)
Danielle Jouenne (ID # 306839)
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Phone: 610-768-3628
Fax: 610-992-3258
E-mail: morrowm@ugicorp.com
E-mail: jouened@ugicorp.com

Post & Schell, P.C.

Date: September 22, 2016


David B. MacGregor (ID #28804)
Jessica R. Rogers (ID # 309842)
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: dmacgregor@postschell.com
E-mail: jrogers@postschell.com

Attorneys for UGI Penn Natural Gas, Inc.

I. FINDINGS OF FACT

1. The DSIC initially may not exceed 5% of billed distribution revenues. 66 Pa.C.S. § 1358.
2. Act 11 provides for a utility to petition the Commission for a waiver of the 5% DSIC cap “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa.C.S. § 1358(a)(1).
3. Utilities must file an LTIP as a prerequisite to implementing a DSIC. 66 Pa.C.S. § 1353.
4. The Act 11 standard for approval of an LTIP, approval of an initial DSIC, and waiver of the DSIC rate cap contain identical language. 66 Pa.C.S. §§ 1352, 1353, 1358.
5. UGI-PNG filed a LTIP with the Commission on December 13, 2013 at Docket No. P-2013-2397056 setting forth its plans for continued evaluation, repair and replacement of distribution infrastructure. *See Petition of UGI Penn Natural Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge*, Docket P-2013-2397056 (Opinion and Order entered September 11, 2014).
6. UGI-PNG filed a petition to Modify its LTIP on February 29, 2016, in accordance with 52 Pa. Code § 121.5(a), because it identified a need to increase its spending in certain categories that resulted in an increase to the total cost of the LTIP by more than 20%. *See Petition of UGI Penn Natural Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan*, Docket No. P-2013-2397056 (Order entered June 30, 2016).
7. On June 30, 2016, the Commission approved UGI-PNG’s modified LTIP, finding that it will ensure and maintain adequate, efficient, safe, reliable and reasonable service.

Petition of UGI Penn Natural Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan, Docket No. P-2013-2397056, p. 6 (Order entered June 30, 2016).

8. UGI-PNG filed Supplement No. 33 to UGI Penn Natural Gas, Inc. Tariff Gas – Pa. P.U.C. No. 8, implementing the DSIC for bills rendered on or after October 1, 2014. (UGI-PNG St. No. 1, p. 5.)

9. As of April 1, 2016, the UGI-PNG DSIC reached the 5% DSIC rate cap, and can no longer recover new investment associated with the ongoing infrastructure repair and replacement work that the Company is undertaking pursuant to its Commission approved LTIP. (UGI-PNG St. No. 1, pp. 5, 7; UGI-PNG Exh. WJM-3.)

10. The DSIC at its current cap of 5% of billed distribution revenues is insufficient to recover the ongoing investment associated with the modified LTIP. (UGI-PNG St. No. 1, pp. 8-9; UGI-PNG Exh. WJM-3.)

11. UGI-PNG's accelerated infrastructure improvement plan is necessary in order to maintain safe and reliable service for its customers. *Petition of UGI Penn Natural Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan*, Docket No. P-2013-2397056 (Order entered June 30, 2016).

12. The Commission has accepted past accelerated replacement of distribution infrastructure, with plans to continue at that replacement pace into the future, as sufficient for meeting the legal standard contained in Act 11. *See, e.g., Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282 (Opinion and Order entered March 14, 2013).

13. UGI-PNG's distribution system is comprised of different types of aging infrastructure, including cast iron and bare steel, which are weakening significantly as they age. *See Petition of UGI Penn Natural Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge*, Docket P-2013-2397056, pp. 39-40 (Opinion and Order entered September 11, 2014).

14. Accelerated distribution infrastructure improvement supports UGI-PNG's ability to reduce the number of leaks on its system, enables it to install additional safety mechanisms, and to relocate meters that are currently located inside customers' buildings. (UGI-PNG St. No. 2-R, pp. 2-5.)

15. There are still leak considerations experienced by UGI-PNG that are being proactively addressed by the Company's DSIC-eligible work. (I&E St. No. 1, pp. 9-11.)

16. Moving meters that are currently located inside houses – a category of expense that UGI-PNG has recently focused on in its modified LTIP – is an important safety concern. (Tr. 104.)

17. UGI-PNG's current level of cast iron and bare steel exceeds the Commission's desired level of zero percent. (Tr. 104; 90.)

18. UGI-PNG originally anticipated spending \$22.9 million per year, for a total of \$114.5 million over the five year period of the plan in DSIC-eligible plant, as indicated in the Company's original LTIP. *See Petition of UGI Penn Natural Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge*, Docket P-2013-2397056, p. 17 (Opinion and Order entered September 11, 2014).

19. UGI-PNG identified increased spending plans in its modified LTIP, and now projects that its DSIC-eligible plant expenditures for 2014 through 2018 will total approximately \$138.7 million. *Petition of UGI Penn Natural Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan*, Docket No. P-2013-2397056, p. 5 (Order entered June 30, 2016).

20. UGI-PNG plans to continue its aggressive investment in infrastructure repair and replacement. (OSBA St. No. 1, p. 7; OSBA Ex. IEC-2 at OCA-I-1.)

21. The impact of UGI-PNG's proposal on customers will be minimal. Every 1% DSIC surcharge increase amounts to an additional \$0.48 per month for the typical Residential heating customer. (UGI-PNG Exh. WJM-3.)

22. Increasing the DSIC will not allow UGI-PNG to avoid base rate proceedings indefinitely. (UGI-PNG St. No. 1-R, p. 10.)

23. All investor owned utilities can support their investment in replacing aging infrastructure through the filing of serial base rate cases, as opposed to through a DSIC mechanism. (UGI-PNG St. No. 1-R, p. 8.)

24. A 10% DSIC rate cap would support UGI-PNG's DSIC-eligible replacement, and would allow the Company to strike an appropriate balance between the use of the DSIC and base rate proceedings for cost recovery purposes. (UGI-PNG St. No. 1-R, p. 12.)

25. A base rate case is a massive undertaking for UGI-PNG, which requires the scheduling of internal labor resources, as well as a significant financial commitment of hundreds of thousands of dollars. (UGI-PNG St. No. 1-R, p. 12; Tr. 52.)

26. Base rate cases also pose a significant burden on the Commission's administrative resources. (UGI-PNG St. No. 1, p. 10.)

27. To the extent the DSIC provides an opportunity to decrease the need for frequent rate cases, the DSIC enhances the efficiency and reasonableness of the service that UGI-PNG can provide, and saves the Company, and ultimately the ratepayer the cost of such a proceeding. (UGI-PNG St. No. 1, p. 10.)

28. All existing consumer safeguards, as required by the Commission and applied in UGI-PNG's DSIC tariff provisions, will remain in place if UGI-PNG increases its DSIC cap to 10%. (UGI-PNG St. No. 1, pp. 10-11.)

29. The DSIC must be reset to zero upon the effective date of new base rates or if the Company's rate of return exceeds its allowable authorized return on equity in any quarter. 66 Pa.C.S. §§ 1358(a)(1), (b).

30. The DSIC is subject to audit at intervals determined by the Commission and UGI-PNG must update the DSIC quarterly to reflect DSIC-eligible property placed in service during the three month period ending one month prior to the effective date of each DSIC update. 66 Pa.C.S. § 1357(a)(2).

31. UGI-PNG must reconcile the revenue received under the DSIC with the Company's eligible costs. If revenues received from the DSIC exceed eligible costs for the reconciliation period, the over collections are refunded to customers with interest. 66 Pa.C.S. § 1358(e)(3).

32. UGI-PNG's DSIC applies the DSIC percentage equally to all rate classes. 66 Pa.C.S. § 1358 (d)(1).

II. CONCLUSIONS OF LAW

1. The proponent of a rule or order "bear[s] the ultimate burden of persuading the Commission, by a preponderance of substantial evidence, that the relief sought is proper and justified under the circumstances." 66 Pa.C.S. § 332(a); *Motheral, Inc. v. Duquesne Light Co.*, 2001 Pa. PUC LEXIS 4 at 9.

2. A "preponderance of the evidence" means that one party must present evidence which is more convincing by even the smallest amount, than the evidence presented by an opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1954).

3. Substantial evidence is "relevant evidence that a reasonable mind may accept as adequate to support a conclusion: more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established." *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

4. As the petitioner or moving party, UGI-PNG bears the burden of proof in this proceeding.

5. A waiver to increase the statutorily established 5% DSIC rate cap may be granted when a utility demonstrates that the initial 5% DSIC rate cap is insufficient to support its current and planned levels of plant replacement and DSIC-eligible spending. *Pa. PUC v. Aqua Pennsylvania, Inc.*, 2009 Pa. PUC LEXIS 263, *19 (Order entered July 23, 2009); *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 (Opinion and Order entered January 28, 2016).

6. The standard for waiving the DSIC cap does not require a showing that the utility cannot possibly undertake its planned replacement projects without a DSIC wavier.

7. Waiving the current DSIC rate cap and increasing the DSIC rate cap to 10% is in the public interest because it will allow UGI-PNG to continue its distribution infrastructure replacement process so as to ensure and maintain adequate, efficient, safe, reliable and reasonable service, and will strike a balance between the Company's use of the DSIC and future base rate proceedings.

8. UGI-PNG has met the standard for waiver to increase the DSIC cap because it has demonstrated that the DSIC at the current cap of 5% of billed distribution revenues is insufficient to support the Company's aggressive infrastructure replacement plan, and because the Commission approved UGI-PNG's replacement plan reflected in its Modified LTIP based on the same standard required for a finding that the waiver of the DSIC cap is appropriate.

9. A DSIC rate cap that may allow the utility to slightly extend the period between rate cases would not bypass the traditional ratemaking process, particularly where doing so strikes the appropriate balance between reliance on the DSIC and the use of base rate proceedings. *Pa. PUC v. Aqua Pennsylvania, Inc.*, 2009 Pa. PUC LEXIS 263, *27-28 (Order entered July 23, 2009).

III. ORDERING PARAGRAPHS

1. UGI Penn Natural Gas, Inc.'s Petition to Waive the DSIC Cap of 5% of Billed Distribution Revenues and to Increase the Maximum Allowable DSIC to 10% of Billed Distribution revenues is granted.

2. UGI Penn Natural Gas, Inc. is hereby authorized to implement the pro *forma* tariff supplement as filed with its Petition.