



COMMONWEALTH OF PENNSYLVANIA

September 22, 2016

E-FILED

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

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

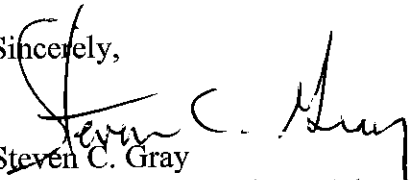
Dear Secretary Chiavetta:

Enclosed please find the Main Brief, filed electronically today with the Pennsylvania PUC, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the enclosed Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Parties of Record
Mr. Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Penn Natural Gas, Inc. :
for a Waiver of the Distribution System :
Improvement Charge Cap of 5% of :
Billed Distribution Revenues and : **Docket No. P-2016-2537594**
Approval to Increase the Maximum :
Allowable DSIC to 10% of Billed :
Distribution Revenues :

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Steven C. Gray
Assistant Small Business Advocate
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**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101**

Dated: September 22, 2016

I. Introduction

On March 31, 2016, UGI Penn Natural Gas, Inc. (“UGI PNG” or the “Company”) filed a Petition for a Waiver of the Distribution System Improvement Charge (“DSIC”) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues (“*Petition*”) with the Pennsylvania Public Utility Commission (“Commission”).

On April 19, 2016, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Answer to the *Petition*.

On June 17, 2016, a Prehearing Conference was held before Administrative Law Judge (“ALJ”) Angela T. Jones. On June 21, 2016, ALJ Jones issued Prehearing Order # 2 setting forth the procedural schedule in this case.

On July 21, 2016, the OSBA served the Direct Testimony of Robert D. Knecht. On August 19, 2016, the OSBA served the Rebuttal Testimony of Mr. Knecht. On August 29, 2016, the OSBA served the Surrebuttal Testimony of Mr. Knecht.

On September 8, 2016, an Evidentiary Hearing was held before ALJ Jones.

On September 16, 2016, the OSBA served the redacted Rebuttal Testimony of Mr. Knecht. The OSBA submits this Main Brief in accordance with the procedural schedule set forth in the ALJ’s Prehearing Order # 2.

II. Summary of Argument

Act 11 of 2012 provided a significant consumer protection by establishing a five percent cap on the DSIC. While Act 11 allows the Commission to grant a waiver to that cap, the plain language of the legislation requires the Company to demonstrate that, without the waiver, it has no other options for providing reasonable service. The Company admits it does not meet this

standard. Furthermore, a careful reading of the statute indicates that the criteria for granting a DSIC and granting a waiver are not identical, nor would such an interpretation be logical or consistent with the legislative history. If the Commission determines that it has an obligation to develop its own standards for waiving the DSIC cap, no metric proposed by any party, such as frequency of base rates cases, incremental cost to consumers, or the relative riskiness of UGI PNG's distribution system, meet the standard.

III. Argument

A. Act 11 of 2012

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 ("Act 11"), which amended Title 66 of the Pennsylvania Consolidated Statutes.

Section 1350 of the Public Utility Code states:

This subchapter shall 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 (emphasis added). Section 1351 of the Public Utility Codes defines

"Distribution system" as:

A system owned or operated by a utility. The term includes a natural gas distribution company, a city natural gas distribution operation, an electric distribution company, a water utility and a collection system for a wastewater utility.

66 Pa. C.S. § 1351. Section 1351 of the Public Utility Code also defines "Distribution system improvement charge" as:

A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility's distribution system.

Id. Section 1353(a) of the Public Utility Code states:

Except as provided under this subchapter, after January 1, 2013, a utility may petition the commission for, 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.**

66 Pa. C.S. § 1353(a) (emphasis added). Section 1358(a)(1) of the Public Utility Code

(“Consumer protections; Limitation”), the statutory language at issue in this proceeding, states:

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 **in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.**

66 Pa. C.S. § 1358 (emphasis added).

Act 11, however, did not modify the duties placed upon a natural gas distribution company (“NGDC”) such as UGI PNG by Section 1501 of the Public Utility Code:

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.

66 Pa. C.S. § 1501 (emphasis added).

B. The *Petition’s* Request for a Waiver of the DSIC Cap

UGI PNG requested that the Company be granted a waiver of the five percent DSIC cap:

As explained below, the revenue provided by the DSIC with a 5% cap is not sufficient for UGI-PNG to maintain its level of investment in its DSIC-eligible distribution infrastructure, due to the Company’s substantial ongoing investment in DSIC-eligible

plant, particularly mains. ***UGI-PNG is seeking to increase the DSIC surcharge cap to 10% of billed distribution revenues to ensure that customers continue to receive safe and reliable service in the future*** as required by Section 1501, 66 Pa. C.S. § 1501.

Petition, at Paragraph 11 (emphasis added).

UGI PNG further explained its request for the waiver in Paragraph 14:

UGI-PNG requests a waiver of the 5% cap on the DSIC rate, and approval to increase the DSIC cap from 5% to 10% of billed distribution revenues. As explained herein, the revenue provided by the DSIC with a 5% cap is not sufficient for UGI-PNG to maintain its level of investment in its DSIC-eligible distribution infrastructure. UGI-PNG has already exceeded the 5% DSIC cap, due to the Company's substantial ongoing investment in DSIC-eligible plant. ***UGI-PNG is seeking to increase the DSIC surcharge cap to 10% in order to maintain its accelerated replacement program*** which allows it to ensure that customers receive safe and reliable service as required by Section 1501, 66 Pa. C.S. § 1501. Even with a 10% cap, UGI-PNG will exceed the DSIC cap well before the end of the current LTIP period.

Petition, at Paragraph 14 (emphasis added). UGI PNG set forth its alternative cost recovery mechanism in Paragraph 17:

UGI-PNG will begin to experience unrecoverable dollars that are associated with revenue that exceeds the 5% DSIC cap on April 1, 2016. Exhibit WJM-3 reflects these unrecoverable dollars on both a quarterly and an accruing basis. Without an increase, by October 1, 2017, UGI-PNG will have foregone more than \$7.8 million worth of revenue associated with DSIC-eligible plant. It is likely that this type of monetary loss ***would require UGI-PNG to support its infrastructure investments through a base rate proceeding.***

Petition, at Paragraph 17.

Thus, UGI PNG readily admits that an NGDC such as itself has a choice of two “mechanisms” through which it can recover the “prudent costs incurred to repair, improve or replace eligible property” in that its distribution system: (1) a base rate proceeding; or (2) the use of a DSIC up to the explicit limitations established by the statute.

It bears repeating that UGI-PNG, has, in fact, a DSIC currently in place that charges the Company's customers five percent of billed distribution revenues. *Petition*, at 1.

C. The Standard to Grant a Waiver of the DSIC Cap

UGI, as set forth above, has requested a waiver of the five percent DSIC cap and to increase the cap to 10% of billed distribution revenues. *Petition*, at 1. The first issue to address is the standard for the granting of that waiver. As set forth above, the Section 1358(a)(1) specifies that “[t]he 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.” The OSBA respectfully submits that the plain language of this provision implies that the Company must demonstrate that the waiver is necessary in order for the utility to provide reasonable service, and therefore the utility has no other options for providing the necessary service. As discussed further below, this interpretation of this provision of the statute is also consistent with the legislative history. Moreover, the Company readily admits that it will meet its service obligations regardless of whether a waiver is granted, and therefore a waiver is not necessary. OSBA Statement No. 1, at 7.

In the OSBA's view, the only reason that there is any debate in this matter is that the statute might be interpreted as applying the same standard to granting the DSIC as to the granting of a waiver, since Section 1353(a) and Section 1358 include the identical language, namely “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” *Compare* Section 1353(a) *with* Section 1358. The Company appears to interpret this parallel language as requiring that the same analysis apply to granting a DSIC and granting a waiver of the five percent cap. Statement No. 1-R, at 4. For the reasons discussed at length below, this

interpretation is nonsensical in that it effectively eliminates the legislated cap and is wholly inconsistent with the legislative history.

Moreover, a careful reading of Sections 1353(a) and 1358 yields an alternative interpretation. Section 1353(a) states, in part, “. . . *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.*” The OSBA respectfully submits that the “*in order to*” requirements of Section 1353(a) do not necessarily apply to the criteria for granting the DSIC, but may alternatively refer to criteria for the costs that may be recovered in the DSIC. Thus, Section 1353(a) may serve only to provide a restriction on the types of costs that may be recovered in a DSIC, rather than specifying the criteria for approving the DSIC. This interpretation is also consistent with the fact that the legislation imposes additional restrictions and requirements on granting both a Long Term Infrastructure Improvement Plan (“LTIIIP”) and a DSIC, in Sections 1352(a)(1)-(7) and 1353(b)(1)-(6) of the Public Utility Code, as OCA witness Jerome B. Mierzwa observes. OCA Statement 1S, at 3. In contrast, Section 1358 is clear that the “*in order to*” requirements apply to granting the waiver.

The OSBA respectfully submits that this alternative interpretation of Section 1353(a) avoids the apparent inconsistencies between the two sections, and allows the Commission to interpret Section 1358 using the plain language of the statute. As Mr. Knecht indicated, this would imply that Section 1358 is a “hard cap” on the DSIC, and could only be waived under extraordinary circumstances. OSBA Statement No. 1-S, at 4. As the Company clearly does not

meet this standard, the OSBA respectfully submits that the *Petition* should be rejected in its entirety.

However, if the Commission interprets Section 1353(a)(1) as stating the same standard for approving a waiver of the DSIC cap as that for approving a DSIC, the Commission is left with the three generic options outlined by Mr. Knecht:

1. Conclude that the legislature wanted to apply the identical standard to granting a DSIC and waiving the cap. This approach would either (a) effectively eliminate the cap as a basic consumer protection, or (b) require the Commission to go back and re-evaluate whether the DSIC programs should have been approved in the first place.
2. Conclude that the plain language of the statute applies to the DSIC waiver but not to granting a DSIC. This approach would require the utility to demonstrate that it was financially or otherwise unable to meet its service obligations unless it was granted a waiver.
3. Conclude that the legislature intended that the Commission use its judgment to establish reasonable but different standards for approving the DSIC and for waiving the DSIC cap. This approach would require the Commission to develop such standards, with little or no guidance from the legislature, presumably based on the normal principles of utility regulation.

OSBA Statement No. 1, at 6-7.

The OSBA respectfully submits that the most logical interpretation is item 2 in Mr. Knecht's list, for the reasons discussed above. The other two options are discussed below.

D. Identical Criteria for Granting a DSIC and Granting a DSIC Cap Waiver

As set forth above, the Company appears to believe that the same criteria should apply to granting a DSIC and granting a cap waiver. As such, the only thing needed to demonstrate that a waiver is necessary is for the Company to show that it has incurred eligible costs in excess of the 5 percent cap. PNG Statement No. 1-R, at 2-3.

The OSBA submits that it would be absurd that the granting of a DSIC (because that legal standard was met) would automatically grant a waiver to a DSIC cap. As both Mr. Knecht and Mr. Mierzwa have stated, such an interpretation would essentially write the cap out of the statute. Mr. Mierzwa observed “That would mean that the cap and waiver provision serve no purpose. I disagree.” OCA Statement No. 1S, at 2. Mr. Knecht indicated “As such, the 5 percent cap would have no effect whatsoever, and there would be no reason for the legislature to include it.” OSBA Statement No. 1, at 6. Mr. Knecht continued “If simply exceeding the cap is sufficient justification for a waiver, there is obviously no point to including the cap as a basic consumer protection within the legislation.” OSBA Statement No. 1, at 8. Thus, the Company’s position requires the Commission to interpret the statute as having no meaningful cap on the DSIC.

In contrast to the Company’s position, the OSBA concludes that the legislature’s use of an explicit numerical cap for the DSIC, combined with the legislated history, imply that the granting of a waiver to the DSIC cap should be a relatively rare occurrence.

In so doing, it is not the intent of the OSBA to “remove the Commission’s discretion and thwart” the availability of a Section 1358 waiver. *See* UGI PNG Statement No. 1-R, at 8. It is the intent of the OSBA, however, to follow the legislature’s intent when it established an explicit numerical restriction on the magnitude of the DSIC and crafted the waiver provision.

Specifically, the OSBA again respectfully submits that the legislature envisioned a significant bar to the granting of a waiver, and that bar is not easily overcome by any investor-owned utility.

Title 1, Section V (“Statutory Construction”), of the Pennsylvania Consolidated Statutes provides the rules when addressing issues of statutory interpretation and construction. Section 1921 (“Legislative intent controls”) states:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

1 Pa. C.S. § 1921(a).

Section 1922 (“Presumptions in ascertaining legislative intent”) provides guidance on how to ascertain legislative intent:

In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

(1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.

(2) That the General Assembly intends the entire statute to be effective and certain.

(3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.

(4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.

(5) That the General Assembly intends to favor the public interest as against any private interest.

1 Pa. C.S. § 1922.

Section 1924 (“Construction of titles, preambles, provisos, exceptions and headings”) provides guidance on the use of titles for a particular statute:

The title and preamble of a statute may be considered in the construction thereof. Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer. Exceptions expressed in a statute shall be construed to exclude all others. The headings prefixed to titles, parts, articles, chapters, sections and other divisions of a statute shall not be considered to control but may be used to aid in the construction thereof.

1 Pa. C.S. § 1924.

Section 1939 (“Use of comments and reports”) provides guidance for the use of the legislative record when attempting to determine intent:

The comments or report of the commission, committee, association or other entity which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly, but the text of the statute shall control in the event of conflict between its text and such comments or report.

1 Pa. C.S. § 1939

The OSBA respectfully submits that combining the guidance for statutory interpretation, as set forth above, results in a high standard for the granting of a waiver of the DSIC cap. First, Section 1922(5) states that the public should be favored over a utility when interpreting Section 1358. Second, Section 1924 states that the title of Section 1358 “Customer protections” and Section 1358(a) “Limitation” can assist in the interpretation in that statute. Third, in accordance with Section 1939, insight into the legislative intent behind the passage of Act 11, and specifically the consumer protections of Section 1358, can be found in the legislative record.

Senator Lisa Boscola supported the passage of the-House Bill No. 1294 (which ultimately became Act 11) in her testimony before the Senate:

Mr. President, we have seen two deadly utility line explosions in Pennsylvania in the past 13 months, so we need to deal with our crumbling utility infrastructure, and we needed to do it yesterday. Through the amendments made to this House bill by Senator Tomlinson and me, we are giving utilities the means to cut through bureaucratic regulatory lag time to get this work underway and underway quickly. Replacing aging pipes and power lines will improve efficiency, safety, and reliability for our ratepayers and as an added bonus, the public works initiative will spur economic development and help get people back to work, truly a win-win.

It is important to note that utilities already recover the cost of infrastructure upgrades through base rates. In other words, we are already paying for these costs. This bill merely enables our utilities to save money, which in turn saves our ratepayers money by avoiding lengthy and expensive rate cases. Currently, utility infrastructure rebuilding efforts are being stalled by prohibitive regulatory lag time, so it is imperative that we do all we can to remove these unnecessary and costly delays.

Mr. President, along with streamlining the process for utilities, **I am confident that this bipartisan proposal strongly imposes the consumer protections that we fight for continuously** in the Committee on Consumer Protection and Professional Licensure. Senator Tomlinson and I sometimes play good cop/bad cop and we do a really good job at that. I thank him so much for allowing me to express some of the concerns that came over from the House that I did not think was best for the bill, but I think we made it a pretty good bill.

One of the key components of the bill is the consumer protections part that puts a 5% cap on the DSIC. Now, not only does this cap protect ratepayers from exorbitant utility bills but it insures that the DSIC provided for in this legislation does not replace rate cases in Pennsylvania. It was never intended to do that.

Remarks of Senator Lisa Boscola, Legislative Journal – Senate, January 25, 2012, at 72

(emphasis added).

Senator Mary Jo White stated:

The DSIC is a wonderful concept. It enables us to put a **small surcharge** on an electric bill that is used to go out to the bond market, particularly in these times of relatively cheap money, and come up with a lot of extra cash to put into the infrastructure right now, not wait for another rate case. It is a wonderful idea, **if consumer protections are in there, and I believe that they are.**

Remarks of Senator Mary Jo White, Legislative Journal – Senate, January 25, 2012, at 73

(emphasis added).

In the House of Representatives, Representative Robert Godshall spoke of the DSIC cap consumer protections, as follows:

The bill also sets a cap on the level of eligible project costs that may be recovered through a DSIC. For such fixed utilities, DSIC **recovery is capped at 5 percent** of the total amount billed to customers through base rates. For water utilities the recovery is capped at 7 ½ percent.

Remarks of Representative Robert Godshall, Legislative Journal – House, February 7, 2012, at 155 (emphasis added).

Representative Phyllis Mundy stated:

The Senate placed a cap of 5 percent on that amount that utilities can automatically raise their rates and also required them to have filed a base-rate case within the previous 5 years.

Remarks of Representative Phyllis Mundy, Legislative Journal - House, February 7, 2012, at 156.

Representative Saylor also spoke in favor of the bill:

While affording utilities the tools that they need to make their updates to their systems, this is creating, as I said earlier, good family-sustaining jobs, and this bill **ensures that consumers are protected as we move forward. They include a 5-percent cap** that would be imposed upon the amount collected from consumers.

Remarks of Representative Saylor, Legislative Journal – House, February 7, 2012, at 157 (emphasis added).

Thus, the legislative record demonstrates that these members of the General Assembly were well aware and supportive of the consumer protection provided by the 5% cap on DSIC revenues, and that this explicit provision was an integral component of the legislation. Significantly, Senator Boscola cited the five percent cap as protecting consumers from “exorbitant utility bills.” Moreover, little, if any, of the discussion surrounding this legislation involved the need for or implications of waiving the explicit five percent cap.

Consequently, using the guidance provided by Title 1, Chapter 19, as set forth above, the OSBA concludes that the legislature set a high bar for a utility that wants a waiver to the five percent DSIC cap. The interpretation of Section 1358 recommended by the OSBA is consistent both with the specific language of the statute and with the legislative intent. The OSBA respectfully submits that a waiver can only be granted “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service” when a utility cannot meet that standard without the waiving of the five percent DSIC cap.

E. Other Criteria Advanced by the Company for DSIC Cap Waiver

If the Commission interprets the statute to imply that it should use its own judgment as to whether a DSIC cap waiver should be granted (as opposed to relying on the explicit language of Section 1358), the question then becomes what standards should apply. Beyond the demonstration that the Company’s eligible costs exceed the 5 percent limit, UGI PNG provides a laundry list of reasons why the DSIC cap should be waived in this proceeding, although it is not entirely clear what explicit standard the Company proposes that the Commission apply. OSBA Statement No. 1-S, at 1-2.

UGI PNG claimed that the Company “is seeking to increase the DSIC surcharge cap to 10% of billed distribution revenues to ensure that customers continue to receive safe and reliable service in the future as required by Section 1501, 66 Pa. C.S. § 1501.” *Petition*, at Paragraph 11. That is merely a restatement of the Section 1358 standard, not a reason to grant a waiver.

UGI PNG also claimed that the Company “is seeking to increase the DSIC surcharge cap to 10% in order to maintain its accelerated replacement program.” *Petition*, at Paragraph 14. The OSBA observes that it may be admirable that UGI PNG is engaged in an accelerated replacement program of its distribution system. However, the five percent DSIC that UGI PNG

has already in place is meant to support that accelerated replacement program. Furthermore, UGI PNG has admitted that it will maintain its accelerated replacement program regardless of whether the DSIC cap waiver is granted:

Both Companies indicate that they will pursue the identical investment strategy whether or not a DSIC waiver is approved, and in fact whether a DSIC mechanism is in place.

OSBA Statement No. 1, at 7 (footnote omitted). Therefore, an accelerated replacement program may be desirable, but it is not a basis to satisfy the Section 1358 standard “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.”

UGI PNG claimed that the bill impact of the proposed waiver is relatively modest, in that “[e]very 1% DSIC surcharge increase amounts to an additional \$0.56 per month for the typical Residential heating customer.” PNG Statement No. 1-R, at 5. While bill impact is certainly an important criterion for the Commission to consider in many aspects of utility regulation, the OSBA submits that defining what magnitude of a bill impact is too large is necessarily subjective. Moreover, there is no need for the Commission to make its own subjective judgment in this respect, since the legislature has explicitly included a 5 percent cap in the legislation. In so doing, the only reasonable interpretation is that the legislature believed that a 5 percent cap was the maximum reasonable bill impact for the DSIC, except in extraordinary circumstances.

In addition, the Company indicated that if a waiver is not granted, it will have no alternative but to file serial base rate proceedings to recover DSIC-eligible costs that would otherwise exceed the cap. In effect, the Company proposes that the Commission find that, but for granting the DSIC cap waiver, base rates cases would be too frequent.

In response, the OSBA observes that the base rate mechanism is, in fact, one of the mechanisms that the legislature intended that utilities use to recover costs. Section 1350 of the

Public Utility Code points out that the DSIC is an *additional* mechanism for UGI PNG to recover those costs, not the only mechanism. Even the Company reluctantly admits that a base rates case would be available to recover any costs that cannot be covered by a DSIC. *Petition*, at Paragraph 17. UGI PNG witness William J. McAllister confirmed the significant role that base rates cases will play for the Company, as follows:

With the implementation of Act 11, and the concomitant incentive to accelerate infrastructure repair and replacement, utilities now have *some* ability to recover through DSICs investments made between base rate cases pursuant to Commission-approved LTIPs. However, even with recovery between base rate cases through the DSIC, because of the significant costs associated with accelerated infrastructure repair and replacement, many utilities, including UGI-PNG, will continue to rely on base rate proceedings as necessary for elements of rate relief. Act 11 does not obviate the need for base rate proceedings, and the detailed investigation which those proceedings provide but it does allow for the DSIC to properly streamline rate recovery related to a very well defined set of utility investments.

UGI PNG Statement No. 1-R, at 10 (emphasis added).

In addition, the problem with the “*too frequent*” argument for base rates proceedings is that there is no obvious standard as to what constitutes “*too frequent.*” The Company declines to offer any such standard. The unrebutted testimony of Mr. Knecht indicated that the elapsed time between rate cases would be 30 to 33 months for CPG and 34 to 38 months for PNG, if DSIC-eligible costs were the only consideration. Moreover, many other factors affect whether the Company will file a base rates case at any particular time. OCA Statement No. 1, at 7. The Company has provided zero specific information regarding the implication of granting a DSIC waiver on the time between rate cases. Thus, even if the Commission determines that frequency of base rates cases is a relevant criterion for waiving the DSIC cap (which it should not do), the OSBA respectfully submits that the Company has not provided any useful information regarding

the impact of the waiver. Therefore, in this event, the OSBA respectfully submits that the Commission should adopt the unrebutted recommendation of Mr. Knecht:

[I]f the Commission concludes that the recently approved LTIPs would result in rate cases that are 'too frequent,' I recommend that the Companies be required to file for a base rates increase before deciding whether a waiver to the DSIC cap is necessary and appropriate. A base rates case would provide the Commission and all other parties an opportunity to review all of the changes that have occurred to the Companies' cost structure since the last base rates proceedings, to ensure that the single-issue ratemaking problems inherent in the DSIC are minimized.

OSBA Statement No. 1, at 12.

F. Other Criteria Advanced by I&E for DSIC Cap Waiver

The OSBA notes that the current proceeding is unusual, in that the advocates for granting a DSIC waiver adopt wholly different rationales in support of their positions. As discussed above, the Company relies on the magnitude of costs, and possibly on rate impact and frequency of base rates criteria. In contrast, I&E based its recommendation for approval of the waiver (albeit with a lower revised cap than proposed by the Company) on the higher risk characteristics of PNG relative to its peers.

In his direct testimony, I&E witness Sunil R. Patel focused on an evaluation of the risks presented by UGI PNG's distribution infrastructure. *See, e.g.*, I&E Statement No. 1, at 10-11.

Mr. Patel concluded:

I recommend that the waiver petition be approved in order for the Companies to reduce the risk identified in their DIMP [Distribution Integrity Management Program]; however, I do not believe that a 10% DSIC is necessary at this point. I recommend that the DSIC be set at 7.5%.

* * *

DSIC at 7.5% is reasonable level that will allow the Companies to reduce pipeline risk in a timely manner.

I&E Statement No. 1, at 12.

At the outset, the OSBA acknowledges that a high level of risk to the public should be a significant concern to the Commission. If a utility cannot reasonably reduce risk without a DSIC cap waiver, the OSBA would agree that this would be a very important consideration in granting such a waiver. However, if that same risk reduction can be readily achieved without a waiver of the DSIC, the OSBA respectfully submits that the legislated criteria under Section 1358 are not met. Moreover, if there is no actual risk reduction associated with granting the waiver, the OSBA respectfully submits that the risk criterion should have no impact on the decision.

Finally, the OSBA observes that the Commission should be very cautious in applying the risk standard to granting a DSIC waiver. The OSBA is concerned that granting a waiver to higher-risk utilities implicitly rewards deterioration in utility safety performance, and thus presents a moral hazard.

Turning to the specifics of Mr. Patel's analysis, while he appears to conclude that the Company's higher risk justifies a DSIC waiver, he did not conclude that the Company's systems are unsafe. OSBA Statement No. 1-R (Redacted), at 3. Furthermore, Mr. Patel provided no explanation or analysis why waiving the DSIC cap and setting it at 7.5% would be reasonable. *Id.*, at 2.

Mr. Patel's risk analysis was disputed to an extent by UGI PNG witness Hans G. Bell. *See* UGI PNG Statement No. 2-R. On cross examination, Mr. Bell was asked whether he agreed with Mr. Patel's risk assessments. Mr. Bell responded, as follows:

I believe in general, yes, we concur with Mr. Patel's assessment; however, in my testimony we also provide some general clarifications with respect to risk reduction that we have achieved that Mr. Patel did not specifically address in his testimony.

UGI PNG Transcript, at 59, lines 14-18. In terms of the specific risk criteria that Mr. Patel applies, the OSBA regrettably submits that these criteria do not demonstrate that the Company is any riskier than the average Pennsylvania natural gas distribution company (“NGDC”).

In I&E Exhibit No. 1 Schedule 5, Mr. Patel presented statistics regarding the mix of pipe by material, and he concludes that the “. . . risk for cast iron/wrought iron mains is trending down . . . and similarly steel risks decreased.” I&E Statement No. 1, at 10. Mr. Patel makes no comparison of the Company’s statistics with other Pennsylvania NGDCs, nor does he indicate whether the improvements being made by the Company are or are not unreasonable. As such, this risk criterion does not support his recommendation.

Mr. Patel goes on to conclude that “[d]espite capital spending in addressing risky mains, PNG leaks per mile are the highest amongst our NGDCs.” In support of that statement, Mr. Patel presented I&E Exhibit No. 1, Schedules 3 and 4. However, these exhibits are of dubious value. Schedule 3 does indeed demonstrate that PNG leaks per mile increased significantly from 2013 to 2015, but Mr. Bell explained that this effect was due to a change in how leaks are reported and categorized, and is not a result of actual increases in physical leaks. Transcript at 61, line 21 to 63, line 2. Moreover, the leaks per mile for PNG affiliate CPG are well below those for the average Pennsylvania NGDC, and Mr. Patel curiously also supports a DSIC cap waiver for CPG.

Schedule 4 also depicts an increase in leaks related to corrosion at PNG, but these statistics presumably suffer from the same problem for those in Schedule 3, and Mr. Patel does not provide a comparison to other Pennsylvania NGDCs. Consequently, the OSBA concludes that there is no credible evidence that risk associated with gas leaks at PNG or CPG is materially higher than those at other Pennsylvania NGDCs.

Lastly, Mr. Patel cited to the lack of progress in replacing inside meters with outside meters at both PNG and CPG, and he offers the statistics shown in Exhibit I&E No. 1 Schedule 2. I&E Statement No. 1, at 10. However, the cross-examination of Mr. Bell demonstrated that there are significant concerns regarding the accuracy of the data underlying this analysis. Mr. Patel's Schedule 2 indicates that inside meters for PNG increased from 13,733 to 16,429 between 2012 and 2013, as if the Company were actually moving meters from outside to inside. This is obvious nonsense. Similarly, CPG reports an increase in inside meters from 2,853 to 3,848 from 2013 to 2014, which is equally unlikely. In addition, while Mr. Patel presents the number of inside meters for a set of Pennsylvania NGDCs, he does not present it as a percentage of total meters. As such, it is impossible to tell whether PNG and CPG are more or less risky than their Pennsylvania peers. The OSBA observes only that the absolute number of inside meters for both PNG and CPG are below that for all other Pennsylvania NGDCs save one. In short, the OSBA submits that Mr. Patel's assessment of inside meters provides no reliable information regarding the relative riskiness of either PNG or CPG.

Ultimately, Mr. Patel's risk assessment is not relevant to this proceeding. Mr. Knecht explained that granting UGI PNG a waiver of the DSIC cap will have no impact whatsoever on the risks present in the Company's distribution system:

Moreover, the Companies indicate that granting a waiver to the DSIC cap in this proceeding will have zero impact on public safety, since the Companies' proposed investment programs are not affected by approval or rejection of the waiver. Therefore, public safety considerations do not justify granting a waiver of the DSIC cap in this proceeding.

OSBA Statement No. 1-R (Redacted), at 3.

Thus, regardless of Mr. Patel's risk concerns, I&E has not met the standard that would allow a waiver of the DSIC cap to be granted.

G. No Upper Bound on DSIC Charges if a Waiver is Granted

A cursory read of Section 1358 reveals that there is no upper bound on the DSIC percentage if the five percent cap is waived.¹ UGI PNG is well aware that there is no statutorily mandated upper bound on the DSIC:

The Commission has previously concluded that its analysis on the initial DSIC must focus on whether the rates produced are just and reasonable. Therefore, the Commission should consider whether rates produced at a 7.5% DSIC revenue cap, or a 10% DSIC revenue cap, *or perhaps an even higher requested cap by a utility in the future*, would be just and reasonable considering the facts and circumstances presented by the petitioning utility on an individual basis at the time of the request.

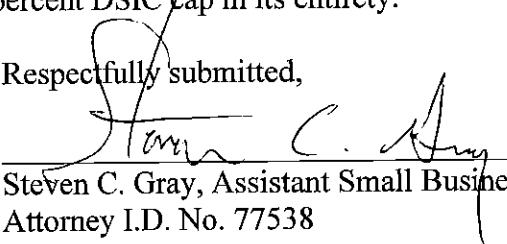
UGI PNG Statement No. 1-R, at 4-5 (emphasis added).

The OSBA respectfully submits that the ALJ and the Commission must exercise extreme care when considering waiving the five percent DSIC cap for an investor-owned utility. What is a 10% request today can easily be a 25% request tomorrow; particularly if the Company's very weak proposed standards for granting a waiver are adopted.

IV. Conclusion

Wherefore, the OSBA respectfully requests that the ALJs and the Commission deny the UGI PNG *Petition* to waive the five percent DSIC cap in its entirety.

Respectfully submitted,


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Dated: September 22, 2016

¹ Mr. Patel asserts that there is a 10% statutory upper bound. I&E Statement No. 1, at 5. He is incorrect.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Penn Natural Gas, Inc. :
for a Waiver of the Distribution System :
Improvement Charge Cap of 5% of :
Billed Distribution Revenues and : **Docket No. P-2016-2537594**
Approval to Increase the Maximum :
Allowable DSIC to 10% of Billed :
Distribution Revenues :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, via email and/or US Mail (*unless otherwise indicated*), in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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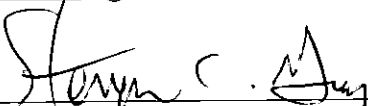
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