



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

September 30, 2016

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> 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

Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues Docket No. P-2016-2537609

Dear Secretary Chiavetta:

Please be advised that the Bureau of Investigation and Enforcement (I&E) **Reply Brief** in this proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at (717) 783-6156.

Sincerely,

Carrie B. Wright  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #208185

CBW/snc  
Enclosure

cc: Certificate of Service  
ALJ Angela T. Jones

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	
	:	
UGI Penn Natural Gas, Inc.	:	Docket Nos. P-2016-2537594
	:	P-2016-2537609
and	:	
	:	
UGI Central Penn Gas Inc.	:	

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**REPLY BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: September 30, 2016

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## **I. INTRODUCTION**

The Bureau of Investigation & Enforcement (“I&E”) incorporates, by reference, the Introduction section contained in its Main Brief of September 22, 2016.<sup>1</sup>

## **II. PROCEDURAL HISTORY**

I&E incorporates, by reference, the Procedural History section contained in its Main Brief of September 22, 2016.<sup>2</sup> On September 22, 2016, UGI Central Penn Gas, Inc. (“CPG”) and UGI Penn Natural Gas, Inc. (“PNG”), I&E, the Office of the Small Business Advocate (“OSBA”), the Office of the Consumer Advocate (“OCA”), and the Central Penn Gas Large Users Group (“CPGLUG”), filed Main Briefs in this matter. Pursuant to and in compliance with the litigation schedule memorialized in Prehearing Order #1 and the Briefing Order previously entered in this proceeding, I&E submits this Reply Brief.

## **III. BURDEN OF PROOF**

As more fully articulated in I&E’s Main Brief,<sup>3</sup> CPG and PNG, as the petitioners in the instant cases, have the burden of proof in this proceeding to establish that they are entitled to the relief they are seeking.<sup>4</sup> The Commission may grant CPG and PNG’s requested waiver of the 5% DSIC limit in order to enable CPG and PNG to ensure and maintain adequate, efficient, safe, reliable and reasonable service.<sup>5</sup> In order to meet the burden of proof in this proceeding, CPG and PNG must “present evidence more

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<sup>1</sup> Main Brief, p. 1-4.

<sup>2</sup> Main Brief, p. 4-5.

<sup>3</sup> Main Brief, p. 5-7.

<sup>4</sup> 66 Pa.C.S. § 332(a).

<sup>5</sup> 66 Pa.C.S. § 1358(a)(1).

convincing, by even the smallest amount, than that presented by any opposing party.”<sup>6</sup>

I&E submits that CPG and PNG have met this burden because CPG and PNG have proven that increasing its DSIC levels is the most efficient way to address its pipeline replacement in the manner requested. No other party has rebutted that proof, nor has any party rebutted the evidence presented by I&E’s Gas Safety Division, which demonstrates the need to address CPG and PNG’s infrastructure. Accordingly, CPG and PNG have satisfied the burden of demonstrating the need increase its DSIC to 7.5% in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

#### **IV. WAIVER OF 5% LIMITATION AND AUTHORIZATION FOR HIGHER MAXIMUM ALLOWABLE DSIC**

##### **A. Summary of Briefing Party’s Position**

I&E recommends and agrees that a waiver of portions of 66 Pa. C.S. § 1358 should be granted. However, I&E does not believe that there is sufficient evidence in the record to demonstrate that a maximum DSIC cap of 10% of billed distribution revenues is warranted; therefore, I&E recommends that the maximum DSIC cap be set at 7.5% of billed distribution revenues.

I&E avers that increasing CPG and PNG’s DSIC to 7.5%, is in the public interest because it will facilitate CPG and PNG’s replacement of dangerous cast iron mains in a more timely manner, ultimately promoting safe and effective service to CPG and PNG’s customers. As noted by CPG and PNG Witness Hans Bell, if not granted a waiver, the

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<sup>6</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Companies' ability to sustain the level of investment found in their annual asset optimization plan and LTIIP becomes harder.<sup>7</sup> The DSIC is an important tool for utilities because the DSIC can serve to facilitate recovery of expenses used improve service quality, improve rate stability, reduce the number of main breaks, lower the amount of service interruptions, increase safety, and for an NGDC, lower the levels of lost and unaccounted for gas. In addition, the DSIC can reduce the number of lengthy and time consuming base rate proceedings a company files. All of the above are important considerations when looking at NGDC safety.

The arguments put forth by OCA, OSBA, and CPGLUG are without merit and should be denied.

### **B. Standard for Granting the Waiver**

As noted in the I&E Main Brief, a natural gas distribution organization's DSIC may not exceed 5% of the amount it bills to customers under its applicable rates.<sup>8</sup> However, the Commission may, upon petition, may grant a waiver of a utility's 5% limit for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.<sup>9</sup> The denial of a waiver which would result in the unnecessary delay in future infrastructural improvements is contrary to the purpose of the DSIC.<sup>10</sup> Further,

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<sup>7</sup> Transcript PNG, p. 88.

<sup>8</sup> 66 Pa.C.S. § 1358(a)(1).

<sup>9</sup> *Id.*

<sup>10</sup> *Petition of PPL Elec. Utilities Corp. for Approval of A Distribution Sys. Improvement Charge Ppl Elec. Utilities Corp.*, C-2013-2345729, 2015 WL 1754563 (Apr. 9, 2015).

a granting of this waiver must be shown to be necessary in order to provide “adequate, efficient, safe, reliable and reasonable service.”<sup>11</sup>

**C. OSBA, OCA, and CPGLUG’s Arguments in Opposition to Increasing the DSIC Maximum Cap**

As noted in the I&E Main Brief, I&E believes that CPG and PNG have met this standard for waiver of the 5% cap because CPG and PNG’s existing infrastructure implicates safety concerns for the I&E Gas Safety Division. The Companies’ current level of investment may not be so easily sustained in the event that a waiver is not granted. CPG and PNG have shown that additional DSIC funding will be prudently used, as evidenced in the underlying LTIP modification proceedings, to address those safety concerns identified by the I&E Gas Safety Division. Furthermore, as denying the waiver would result in the unnecessary delay in cast iron main and unprotected steel main replacement, which is not only contrary to the purpose of the DSIC, but it would produce a result that is unjust, unreasonable, and contrary to the public interest because it would expose the public to the unnecessary danger of untimely main replacement.

First and foremost, it appears that OSBA is confused about I&E’s position in this case. In the OSBA Main Brief, it is mentioned several times that I&E did not provide information to compare CPG and PNG to other Pennsylvania NGDCs and, therefore, it is impossible for OSBA to determine whether CPG and PNG are any riskier than any other NGDC in the Commonwealth. I&E asserts that this comparison OSBA is hoping for is simply not necessary. CPG and PNG’s need for a DSIC maximum cap waiver is based

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<sup>11</sup> 66 Pa.C.S. § 1358(a)(1).



on the Companies' own individual risk; not the Companies' risk relative to other NGDCs in the Commonwealth. Whether CPG and PNG are riskier than any other NGDC is simply non-material. It is theoretically possible that CPG and PNG could be the least risky NGDCs in the Commonwealth, but still be risky enough to warrant a DSIC waiver. Once again, it is not CPG and PNG's risk relative to other NGDCs that matters, but CPG and PNG's own individual risks that matter.

Further, OSBA notes in their Main Brief that I&E's exhibits showing that PNG has the highest number of leaks per mile as compared to other NGDCs is "of dubious value."<sup>12</sup> As noted in the I&E Main Brief, Company Witness Hans Bell did not dispute that the figure presented by I&E of 1.65 leaks per mile is accurate.<sup>13</sup> I&E submits that, once again, OSBA is confused about the value of this information. OSBA seems to imply that the concern is that the number of leaks per mile increased between 2013 and 2105.<sup>14</sup> While certainly a decrease in the number of leaks would be ideal, the true value of this information is simply that currently PNG has more leaks per mile than any other NGDC in the Commonwealth. PNG has been applying more stringent leak classification criteria since 2013. Because of this the number of leaks reported by PNG is very accurate. No matter how OSBA tries to spin it, PNG still has 1.65 leaks per mile which is very high. These leaks exist no matter what classification criteria PNG uses and should be repaired to preserve the public safety.

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<sup>12</sup> OSBA PNG Main Brief, p. 18.

<sup>13</sup> I&E Main Brief, p. 10.

<sup>14</sup> OSBA Main Brief PNG, p. 18.

OSBA goes on to take issue with the fact that CPG's leaks per mile are well below the average Pennsylvania NGDC and I&E still supports a DSIC maximum cap waiver for CPG.<sup>15</sup> I&E submits this goes back to the original problem identified above with OSBA's position, which is the need to compare one NGDC with another. I&E agrees that CPG does not have nearly the number of leaks per mile as PNG. However, CPG has separate risk factors that I&E believes make waiver of the DSIC maximum cap necessary. As noted in the I&E Main Brief, one concern is that CPG's risk for steel mains is increasing.<sup>16</sup>

A further issue for each Company is inside meters. Once again, OSBA has confused the purpose of the information provided by I&E. OSBA notes that Mr. Patel's exhibit shows that PNG's inside meters increased from 2012 to 2013 and that CPG's number of inside meters increased from 2013 to 2014. OSBA then implies that I&E was trying to show that CPG and PNG were actually moving meters inside and that this would be "obvious nonsense."<sup>17</sup> OSBA is correct that to imply that a Pennsylvania NGDC is moving meters inside is "obvious nonsense." In fact, on cross examination about this very issue, Mr. Patel stated that at times NGDCs find meters that were recorded as being outside that are actually inside, or relocate meters that are inside to outside and that this is why we see these numbers going up and down.<sup>18</sup> Nowhere did I&E indicate that CPG and PNG were moving inside meters outside. Once again the data

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<sup>15</sup> OSBA Main Brief PNG, p. 18, OSBA Main Brief CPG, p. 18.

<sup>16</sup> I&E Main Brief, p. 11

<sup>17</sup> OSBA Main Brief PNG, p. 19, OSBA Main Brief CPG, p. 19.

<sup>18</sup> Transcript PNG, pp. 79 and 80.

provided by I&E and undisputed by the Companies boils down to this; the number of inside meters the Companies currently have is a safety risk. While theoretically possible that a NGDC may move a meter inside for some reason, the information presented by I&E was simply an effort to show the number of inside meters the Companies are currently reflecting in their individual records. Once again, the OSBA observation that the total “number of inside meters for both PNG and CPG are below that for all other Pennsylvania NGDCs save one,” is meaningless. As noted time and time again by Mr. Patel, each company must be reviewed on a case-by-case basis when determining whether to grant a DSIC maximum cap waiver.<sup>19</sup> It is the risk of PNG and CPG themselves that are important, not the Companies’ risks relative to any other NGDC.

In addition, I&E disagrees with OCA’s assessment that there has not been a claim in this proceeding that the current state of these Companies’ infrastructure poses a safety risk.<sup>20</sup> This was, in fact, the subject of the I&E testimony. As noted in the Companies’ Main Briefs, Mr. Bell and Mr. Patel are the only two witnesses in these proceedings qualified to assess the Companies’ infrastructure issues and both agree that the work being addressed through the Companies’ Long-Term Infrastructure Improvement Plans (“LTIIIP”) is necessary to ensure safe and reliable service.<sup>21</sup>

In its Main Brief which largely relies on the evidence set forth by OCA and OSBA, CPGLUG states:

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<sup>19</sup> Transcript PNG, pp. 78, 81, 83.

<sup>20</sup> OCA Main Brief PNG, p. 6, OCA Main Brief PNG, p. 6.

<sup>21</sup> PNG Main Brief, p. 24 and CPG Main Brief, p. 24.

The record in this proceeding fails to support the Company's claim that a DSIC waiver and increase are necessary. Specifically, the circumstances promoting CPG's DSIC waiver request do not indicate that the Company's infrastructure poses significant safety and reliability issues, nor does the Company's DSIC Petition indicate that the current pace of its infrastructure replacement efforts is unacceptable and possibly harmful to the public.<sup>22</sup>

This is simply untrue. As stated by the Companies in their Main Briefs:

There is simply no factual foundation for the suggestion that the [Companies'] 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 LTIP are necessary to ensure the Company can continue to provide safe and reliable service. The DSIC rate cap waiver will allow the [Companies] to recover costs associated with those projects.<sup>23</sup>

I&E agrees with this statement. As noted in the I&E Main Brief, I&E believes that it is best to use a proactive approach and prevent a safety incident from occurring, rather than using a reactive approach after the fact. The Companies' current level of investment may not be so easily sustained in the event that a waiver is not granted. CPG and PNG have shown that additional DSIC funding will be prudently used, as evidenced in the underlying LTIP modification proceedings, to address those safety concerns identified by the I&E Gas Safety Division. Of paramount importance in this matter is the concern for public safety. I&E is the only party to this proceeding with a dedicated Gas Safety Division. As such, I&E has an obligation to inspect the Companies' pipelines for safety

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<sup>22</sup> CPGLUG Main Brief, p. 7.

<sup>23</sup> PNG Main Brief, p. 24, CPG Main Brief, p. 24.

related issues. Further, I&E is the only party that has been given the authority to enforce the safety regulations found at 49 CFR § 192. As stated previously, it would be detrimental to both the CPG and PNG ratepayers, as well as the Companies' themselves, to be required to fall into such a state of disrepair that a safety incident becomes almost inevitable before a request for a DSIC cap waiver is granted.

#### IV. CONCLUSION

The Commission's Bureau of Investigation and Enforcement represents that it supports the CPG and PNG being granted a waiver of the 5% DSIC cap. However, I&E respectfully requests that Administrative Law Judge Angela T. Jones recommend, and the Commission subsequently approve, a maximum DSIC cap of 7.5% in lieu of the 10% maximum cap requested by the Companies.

Respectfully submitted,



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Dated: September 30, 2016

BEFORE THE  
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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 :

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Distribution Revenues and Approval to :  
Increase the Maximum Allowable DSIC to :  
10% of Billed Distribution Revenues :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Brief** dated September 30, 2016, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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