COMMONWEALTH OF PENNSYLVANIA

September 30, 2016

E-FILED

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

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

Dear Secretary Chiavetta:

I am delivering for filing today the Reply Brief, on Behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Copies have been served today 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

Office of Small Business Advocate
300 North Second Street, Suite 202 | Harrisburg, PA 17101 | 717.783.2525 | Fax 717.783.2831 | osba.pa.gov

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF ON BEHALF OF THE <u>OFFICE OF SMALL BUSINESS ADVOCATE</u>

Steven C. Gray
Assistant Small Business Advocate
Attorney ID# 77538

For: John R. Evans
Small Business Advocate

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

Dated: September 30, 2016

TABLE OF CONTENTS

I. Introduction

On March 31, 2016, UGI Central Penn Gas, Inc. ("UGI CPG" 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.

On September 22, 2016, the OSBA served its Main Brief.

The OSBA submits this Reply Brief in accordance with the procedural schedule set forth in the ALJ's Prehearing Order # 2.

II. Summary of Argument

The Company presents a series of proposed, and sometimes contradictory, standards by which the ALJ and the Commission should evaluate the granting of a waiver of the five percent (5%) DSIC cap. None of UGI CPG's proposed "standards" comply with the language or intent of Act 11.

The Company also proposes to bypass the legal standard set forth in Act 11 by allowing a utility to obtain a waiver of the 5% DSIC cap simply by having a long term infrastructure improvement plan ("LTIIP") in place. This legal argument by UGI CPG argument violates fundamental principles of statutory construction, and effectively removes Section 1358(a)(1) from the Public Utility Code.

The OSBA standard for the granting of a waiver to the 5% DSIC cap, which requires that a demonstration that such a waiver is necessary for the safe operation of the utility's distribution system, is a just, reasonable, and balanced approached to the granting a waiver to this consumer protection.

The Bureau of Investigation and Enforcement ("I&E") raises the issue of UGI CPG's distribution system being a danger to the Company's customers and the public. If the Commission finds both that the Company's system is dangerous and that the DSIC cap waiver will help resolve the danger, the OSBA supports the waiver. A dangerous distribution system would easily satisfy the statutory standard for the granting of a DSIC cap waiver advocated by the OSBA in this proceeding.

III. Argument

A. The Various Standards proposed by UGI CPG

In a scattershot manner, UGI CPG, in its Main Brief, proposes a series of standards by the which the ALJ and the Commission should evaluate a request for a waiver of the five percent DSIC cap under 66 Pa. C.S. § 1358(a)(1). Ultimately, the Company's "standards" amount to nothing more than this: *Because the statutory language for granting a DSIC is the same as that for granting a waiver of the DSIC cap, a waiver must automatically be granted to any utility whose DSIC-eligible costs exceed 5 percent of distribution revenues.*

The OSBA submits that this "standard" is inconsistent with a reasonable interpretation of the explicit language of the statute, it defies common sense, and it is wholly incompatible with the legislative history associated with Act 11.

First, UGI CPG argues:

> To be eligible for such a [Section 1358(a)(1)] waiver, UGI-CPG 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.

UGI CPG Main Brief, at 6.

This first proposed standard states conditions that are obviously necessary for granting a DSIC cap waiver, but which are clearly insufficient for meeting the legislated requirements for such waiver. Accelerating infrastructure replacement is one of the goals of Act 11 and is a requirement for granting a DSIC in the first place, and must therefore obviously be met before a cap waiver can be granted. Similarly, there is no need for a DSIC cap waiver if the utility will not incur sufficient DSIC-eligible costs to exceed the cap. While these conditions are, by definition necessary, they are hardly sufficient to justify a waiver. In effect, these conditions amount to nothing more than "a DSIC has been in place long enough for DSIC-eligible costs to exceed the legislated cap." *See* OSBA Statement No. 1-S at 2, footnote 1. As the OSBA explains at some length in its Main Brief, if these conditions represented the entirety of the standard for granting a waiver, the explicit 5% cap would be automatically waived as soon the costs exceeded the cap, and the cap would have no practical effect. *See* OSBA Main Brief, at 8. As Mr. Knecht testified, the Company's interpretation of the statute *". . . implies that once a DSIC is granted, a cap waiver must also be granted because the same criteria apply. In effect, the Companies' interpretation is that the cap is not even a 'soft cap,' but is in fact no cap at all."* OSBA Statement No. 1-S, at 4.

In order to justify this interpretation of the statute, UGI CPG must demonstrate that the legislature specifically intended that the explicit numerical cap written into the legislation would be subject to automatic waiver merely as a result of costs exceeding the cap. Unsurprisingly, the Company's Main Brief makes no effort to address this requirement. Bluntly stated, such a conclusion is contrary to both a common sense interpretation of the legislation and to the legislative history detailed in the OSBA main brief. *See* OSBA Main Brief, at 10-12. The OSBA therefore respectfully submits that the Company has not met its burden of demonstrating that the legislature intended that the cap be subject to automatic waiver, and therefore the *Petition* must be rejected.

Second, UGI CPG argues for a two-step standard, as follows:

> The Commission has already found, through its approval of the Company's modified LTIIP [long term infrastructure improvement plan], 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 LTIIP 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 CPG Main Brief, at 7 (formatting added).

Mr. Knecht responded to this second standard:

> 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.

Furthermore, the OSBA observes that what is the "timely recovery of the Company's incremental costs" is in the eyes of the beholder. A city-owned utility such as PGW in Philadelphia is a cash flow utility. *See* OSBA Statement No. 1, at 14. Timely recovery could possibly be a significant issue for cash-flow-regulated PGW. Timely recovery for an investor-owned utility such as UGI CPG, whose last base rates case was filed in 2008, is apparently not a significant issue. OSBA Statement No. 1, at 10. The Company was obviously aware of the legislated DSIC cap when it filed its LTIIP and its DSIC application, and it simply opted not to file a base rates case, despite the fact UGI CPG was presumably aware that its DSIC-eligible costs would eventually exceed the cap. This decision is, of course, the Company's prerogative, and it is naturally based on a wide variety of factors beyond DSIC-eligible costs. *See, e.g.,* OCA Statement No. 1S, at 3. However, it is nonsense for the Company to claim that it both needs and is entitled to a DSIC cap waiver simply because it chose not to file a base rates case in a timely manner, despite being fully aware of the explicit legislative restrictions on the DSIC.

Third, UGI CPG proposes yet another standard:

> 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.

UGI CPG Main Brief, at 9.

It again bears repeating that UGI CPG currently has a five percent DSIC. With that in mind, UGI CPG's third standard variant merely requires that a utility demonstrate that a five percent DSIC is just "insufficient to support" its spending. UGI CPG makes no claim that its infrastructure will be in peril, or that the Company will experience any financial harm: UGI CPG just wants the extra money, and the waiver should be granted on this basis alone. The OSBA respectfully observes that "the General Assembly intends to favor the public interest as against any private interest" when interpreting statutes such as Section 1353(a)(1). 1 Pa. C.S. § 1922(5).

Fourth, UGI CPG presents yet another standard:

> Waiver of the DSIC rate cap is appropriate where a utility has identified necessary infrastructure repair and replacement projects in its LTIIP, the Commission has approved the LTIIP, 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 LTIIP projects.

UGI CPG Main Brief, at 9.

The OSBA acknowledges that the Commission has approved UGI CPG's LTIIP. However, UGI CPG then proposes that a waiver can be granted if the five percent DSIC cap "is insufficient . . . to recover revenues associated with those LTIIP projects." The five percent DSIC should, by definition, be recovering revenues "associated" with the LTIIP projects. Perhaps UGI CPG is suggesting that the DSIC should be waived to such an extent that it recovers *all* revenues associated with LTIIP projects.

Such a standard, as proposed by UGI CPG, should be a full-employment bill for the private law firms, public advocates, and Commission staff for the foreseeable future. Future DSIC waiver petitions will propose ever higher caps, as utilities attempt to "recover revenues associated with those LTIIP projects."

B. The "Same Statutory Standard" Analysis proposed by UGI CPG

In the alternative to its quadruple witching standards, UGI CPG argues that the same standards apply to the establishment of the Company's LTIIP; the granting of the DSIC; and, ultimately, the granting of a waiver to the DSIC cap:

> 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.
>
> * * *
>
> Further, this language matches the language provided in Section 1352, 66 Pa.C.S. § 1352, for approval of the LTIIP.
>
> * * *
>
> The same statutory standard should apply where identical language is used by the General Assembly.

UGI CPG Main Brief, at 10. The Company then concludes, as follows:

> A consistent interpretation of the identical statutory language contained in Section 1358(a)(1) must conclude that the spending that results from an LTIIP 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.

UGI CPG Main Brief, at 11.

Simply put, UGI CPG argues that if a utility has an approved LTIIP in place, then that is sufficient to satisfy the standards of Section 1358(a)(1) and grant a waiver to the five percent DSIC cap. The OSBA observes that many natural gas distribution companies ("NGDCs") have

LTIIPs in effect. Therefore, under the UGI CPG Same Statutory Standard ("UGI SSS") view of the world, all of those NGDCs can be granted waivers to the DSIC cap.[1]

However, as discussed in the OSBA's main brief, the existence of identical language in Sections 1352, 1353, and 1358 does not imply that the standards for approving the LTIIP, adopting a DSIC, and granting a waiver are identical. *See* OSBA Main Brief, at 5-6. Consider Section 1353(a)(7) regarding the approval of the DSIC:

> [T]he 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 expression, ". . . in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service" could be interpreted as modifying either "approve the establishment of a distribution system improvement charge" or "the reasonable and prudent costs incurred to repair, improve or replace eligible property . . ." For the reasons stated above and in the OSBA's main brief, interpreting this language as setting the standard for *also* approving a DSIC mechanism results in a logical inconsistency in the legislation, such that the legislated cap would have no practical effect. As the legislative history clearly indicates that the cap was one of the important consumer protections, the OSBA respectfully submits that the "in order to" language in Section 1353 more logically modifies the "reasonable and prudent costs incurred" language. As such, the "in order to" language of Section 1353 is simply one of the criteria for the types of costs that can be recovered in a DSIC, and does not serve as the sole criterion for approval of the DSIC itself. This is also a logical

[1] The Company attempts to buttress its argument by citing to *Pa. PUC v. Aqua Pennsylvania, Inc.*, 2009 Pa. PUC LEXIS 263 (Order entered July 23, 2009) ("*Aqua*"). UGI CPG Main Brief, at 14-15. A decision that was entered prior to the passage of Act 11 is of no relevance to the granting of a waiver under Section 1358(a)(1), and has no probative value in the determination of the proper legal standard for that section of the Public Utility Code.

interpretation in that there are clearly additional statutory restrictions on granting a DSIC. OCA Statement No. 1S, at 3. Therefore, granting a waiver is not subject to the identical criteria as granting a DSIC. Specifically, Section 1358(a)(1) 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(a)(1).

A common sense reading of Section 1358(a)(1) indicates that a waiver should be granted if it is necessary "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service."[2] Logically, if other alternatives for meeting that service standard are available, a waiver is not necessary. *See* OSBA Statement No. 1 at 4.

In contrast, the UGI SSS theory effectively removes Section 1358(a)(1) from the Public Utility Code. The UGI SSS theory dictates that the only analysis an ALJ and the Commission will have to perform is the simple question: does this NGDC have an LTIIP? If the answer is yes, then a DSIC cap waiver is granted. That violates the precept of statutory construction that requires all parts of a statute to be given effect. 1 Pa. C.S. § 1922(2).

The Company cites to *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 (Order entered January 28, 2016) ("*PGW*") in support of its "Same Statutory Standard" argument. However, as UGI CPG acknowledges, the

[2] It is important to recognize that I&E agrees with this interpretation of the statute. *See, e.g.*, I&E Main Brief, at 7. I&E's position is that CPG is so unsafe that a DSIC waiver is necessary, in that it will somehow get CPG to operate its system safely. Unfortunately, I&E is not explicit as to what exactly CPG will do differently to improve safety if a waiver is granted.

Commission in *PGW* adopted an entirely different standard, finding that waiving the DSIC rate cap was "the most cost-effective and least problematic means of ensuring that the Company can obtain this additional funding in a timely fashion." *PGW*, at 41. *See* UGI CPG Main Brief, at 15-16. The Commission decision does not provide any support for the UGI SSS approach.

In addition, the Company attempts to buttress its argument by pointing out that "cast iron and bare steel mains" should really be at "zero percent," and that the Company wants to get to "that number as efficiently and expeditiously as possible." UGI CPG Main Brief, at 21. The legislature was not ignorant of the fact that NGDCs across the Commonwealth still used cast iron and bare steel mains when it passed Act 11. In fact, the legislature granted NGDCs like UGI CPG a 5% DSIC to help remedy the problem on an accelerated basis. However, the legislature also passed a 5% DSIC cap, so the mere existence of cast iron and bare steel main does not allow that cap to be ignored.

The Company also argues that "base rate cases also pose a significant burden" on UGI CPG and the Commission. UGI CPG Main Brief, at 22. The OSBA admits that base rates cases are costly and involved. OSBA Statement No. 1, at 9. However, the issue of avoiding base rates cases is not a criterion that the Company added to its UGI SSS. Furthermore, while UGI CPG argues for "a schedule of intermittent base rate proceedings," the Company provides no guidance on the definition of "intermittent" other than to cite to the pre-Act 11 *Aqua* case that "two years was not an excessive period of time between rate cases." UGI CPG Main Brief, at 25. The OSBA agrees that the legislature wanted to implement a DSIC to reduce base rates cases, *and* it wanted a cap on the DSIC to protect consumers. This is a classic balancing of interests that the legislature codified into the statute. UGI CPG's entire argument is simply to eliminate the balance and focus only on one issue.[3]

The Company disingenuously mis-characterizes the testimony of Mr. Knecht in this proceeding. UGI CPG states, as follows:

> 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.
>
> * * *
>
> 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".

UGI CPG Main Brief, at 23-24.

The OSBA has never made this claim, either in Mr. Knecht's testimony, cross examination, or in a Main Brief. Mr. Knecht stated the following, under cross examination by the Company's attorney:

> Increased leak levels are a safety issue unless they happen to be a statistical anomaly related to a change in methodology for tracking how you measure leaks. If the increased leak level is not physical but is only a matter of how the bookkeeping is done, then I don't believe it's a safety issue.

Transcript, at 129, line 25 to 130, line 5.

The Company is well aware that Mr. Knecht was referring to a previous response of UGI CPG witness Hans Bell. Mr. Bell explained that the Company had recently changed its arithmetic methodology which changed UGI CPG's "leak classification criteria," resulting in a significant increase in leak statistics. Transcript, at 80, line 15 to 81, line 5. The OSBA rejects

[3] The argument can be made in response to UGI CPG's "bill impact" analysis. *See* UGI CPG Main Brief, at 23. The legislature was fully aware of how a DSIC would impact customers' bills, and *still* enacted a rate cap on the DSIC.

the arguments presented by UGI CPG in its Main Brief on this issue, and respectfully requests that the ALJ and the Commission do the same.

The UGI SSS has the fundamental flaw of letting the tail wag the dog. The Commission has to analyze the legal standard for three distinct issues. First, the Commission must decide whether a proposed LTIIP, based upon the evidence before it, meets the legal standards of Section 1352(a)(6) and (7). Second, the Commission must perform an entirely different analysis when considering whether a proposed DSIC should be approved under Section 1353. Third, the ALJ and Commission must analyze the balance between the consumer protection[4] of a five percent DSIC cap versus the desire of an NGDC to obtain greater inter-base rates cash.

Consequently, the UGI SSS must be rejected. The approval of an LTIIP does not overlay the result of the statutory standard analysis on any other statutory section of the Public Utility Code.

C. The OSBA Standard for Granting a DSIC Waiver

In its Main Brief, UGI CPG stated that the "OSBA and OCA have argued that a more narrow and onerous standard should be applied to the waiver provision of Act 11." UGI CPG Main Brief, at 11. The OSBA agrees with this analysis, and also observes that any standard whatever would be more "onerous" than the free pass given under the UGI SSS.

The plain language of Section 1358(a)(1), set forth above, indicates 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. Another way of phrasing the same OSBA standard is proffered by OSBA witness Robert D.

---

[4] UGI CPG also cites to "the other existing consumer safeguards provided by Act 11." UGI CPG Main Brief, at 26. The legislature was fully aware of these "other" consumer protections, and still enacted Section 1358(a)(1), with a specific numerical cap, into law. Clearly, the legislature believed that these "other" consumer protections were insufficient on their own.

Knecht, that Section 1358(a)(1) is a "hard cap" on the DSIC, and could only be waived under extraordinary circumstances. OSBA Statement No. 1-S, at 4.

The Company also argues, as follows:

> The argument from OSBA and OCA, which concludes that because UGI-CPG 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.

UGI CPG Main Brief, at 16. The Company mis-characterizes the Commission's decision in the *PGW* waiver case:

> My understanding and my review of the Commission's decision in that proceeding was that, at least to a certain extent, the Commission did not accept my argument that the company had alternative financing sources for the DSIC cap.

UGI CPG Transcript, at 124, lines 20-24. *Accord* OSBA Statement, No. 1, at 14-15. *See also, PGW*, at 43.[5]

However, the OSBA standard cannot be mutated into absurdity as UGI CPG suggests. "Requiring an additional showing that UGI-CPG ***cannot possibly undertake*** its planned replacement projects without a DSIC waiver" has never been an argument made by the OSBA, and is straw man trotted out by the Company to mislead the ALJ and the Commission. UGI CPG Main Brief, at 14 (emphasis added).

UGI CPG also argues that the "standard proposed by the OSBA . . . would require a utility to be at risk of being unable to provide safe and reliable service in order to receive a

[5] Mr. Knecht also details the substantial differences between PGW, the company, and an investor-owned utility such as UGI CPG. *See* OSBA Statement No. at, at 14-15.

waiver of the DSIC rate cap." UGI CPG Main Brief, at 17. The OSBA has never made that argument, and is another example of the Company trying to sensationalize this proceeding.

UGI CPG then swings for the fences:

> 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.

UGI CPG Main Brief, at 18. The Company's argument is absurd to the point of being disingenuous. The OSBA has never asserted an "absolute necessity" standard, nor has the OSBA advocated for a violation of Section 1501 of the Public Utility Code as a standard.

The OSBA has, in fact, advocated for a granting of a waiver when a utility has demonstrated it is necessary due to extraordinary circumstances. That, by definition, simply means that UGI CPG has to show that something unusual or out of the ordinary has occurred between rate cases. Furthermore, it always bears repeating: UGI CPG is using a DSIC today, and is collecting 5% of distribution revenues today. These dire, overly emotional statutory constructs tossed out by the Company are red herrings to distract from the central issue: has UGI CPG demonstrated that it is necessary to collect additional cash between base rates cases? If the Company has demonstrated that, or if some unusual problem has cropped up in the UGI CPG distribution system, then the DSIC rate cap can and should be waived. Otherwise, it shouldn't.

D. The I&E Main Brief

1. Danger to the Company's Ratepayers

I&E stated the following in its Main Brief:

> Furthermore, as denying the [DSIC cap] 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.

I&E Main Brief, at 10 (emphasis added).

I&E also argued, as follows:

> If the Companies efforts to reduce the amount of this pipe in their systems are curtailed because the investment required becomes too much for the Companies to maintain this could lead to ***disastrous consequences*** for the Companies such as an explosion.

I&E Main Brief, at 11-12 (emphasis added).

The OSBA respectfully observes that it has scoured the record in this proceeding and has found no evidence that the public will be placed in greater danger if a waiver of the 5% DSIC cap is not granted to UGI CPG.

However, if the ALJ and Commission conclude that I&E's interpretation of the record evidence is correct, that UGI CPG's consumers and the general public will be placed in unreasonable danger without a cap waiver, and that granting the waiver will result in a significant reduction in those risks, the OSBA unequivocally states the following: the OSBA supports a waiver (as it fully meets the legal standard proposed by this office), and the OSBA supports the immediate implementation of that waiver.

Moreover, I&E offers no credible basis for its proposed 7.5 percent cap. Therefore, the OSBA respectfully submits that if the Commission finds that granting UGI CPG a waiver to the DSIC cap will avoid possible explosions, it should grant the Company's request for a 10% cap. The OSBA takes the assertions of I&E in its Main Brief seriously, and is concerned that UGI CPG has allowed its distribution system to deteriorate to an unreasonably unsafe condition, regardless of the Company's protestations to the contrary.

2. I&E Risk Analysis

I&E, in its Main Brief, argued for granting UGI CPG a waiver of the DSIC cap based on the risk analysis performed by I&E witness Sunil R. Patel. *See, e.g.*, I&E Main Brief, at 10.

I&E ultimately concludes that the unsafe status of PGW was what justified Commission granting the DSIC cap waiver in that case. I&E Main Brief, at 12. However, I&E makes no effort to demonstrate that the UGI CPG's system has similar risk characteristics to the PGW system. In contrast, Mr. Knecht testified, as follows:

> Prior to the proceeding in which the waiver to PGW's DSIC was approved, PGW's LTIIP called for replacement of cast iron and unprotected steel mains over an 86 year period. Even with the waiver, PGW's goal is to reduce the cast iron mains replacement period to a 48 years and unprotected steel to 66 years. By way of contrast, both of the Companies' LTIIPs anticipate replacing cast iron mains over a 13 year period and bare steel mains over a 28 year period. PGW's need for replacement capital was obviously more extreme.

OSBA Statement No. 1, at 14.

I&E's failure to make any comparisons across utilities of either the current status or the replacement plans for cast iron and unprotected steel pipe undermines its conclusion that a DSIC cap waiver for UGI CPG is necessary.

Furthermore, I&E argues that UGI Penn Natural Gas has the highest leaks per mile of any NGDC in the Commonwealth at 1.65 versus an average of 0.95. I&E Main Brief, at 10. I&E cites this metric as a risk to public safety, and a basis for granting the 5% DSIC cap waiver. Curiously, I&E does not mention that UGI CPG is at 0.2245 leaks per mile, far *below* the average and the lowest of any utility surveyed by the Mr. Patel. *See* I&E Exhibit No. 1, Schedule 3. To be consistent, I&E should have argued to deny the DSIC cap Waiver for CPG.

In light of UGI CPG's stated future behavior, the OSBA respectfully submits that Mr. Patel's risk assessment is not relevant to whether a DSIC cap waiver should be granted in this proceeding. Mr. Knecht's unrebutted testimony stated UGI CPG will continue to repair and replace its distribution infrastructure at the same pace, regardless of whether a waiver of the DSIC cap is granted. Therefore, waiving the cap will have no impact whatsoever UGI CPG's 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.

Therefore, unless the ALJ and Commission agree with I&E's assertions, set forth above, that the UGI CPG distribution system is a danger to its customers and that granting a waiver to the DSIC cap will eliminate reduce that danger, Mr. Patel's risk analysis does not meet the standard that would allow a waiver of the DSIC cap to be granted.

IV. **Conclusion**

Wherefore, for the reasons set forth in the OSBA Main Brief and this Reply Brief, the OSBA respectfully requests that the ALJs and the Commission deny the UGI CPG *Petition* to waive the five percent DSIC cap in its entirety.

Respectfully submitted,

Steven C. Gray
Assistant Small Business Advocate
Attorney I.D. No. 77538

For: John R. Evans
Small Business Advocate

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

Dated: September 30, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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 US Mail *(unless otherwise indicated)*, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Angela T. Jones
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
Angeljones@pa.gov

Jessica R. Rogers, Esquire
David B. MacGregor, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
jrogers@postschell.com
dmacgregor@postschell.com

Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
400 North Street, 2nd Floor West
Harrisburg, PA 17120
carwright@pa.gov
(Email and Hand Delivery)

Danielle Jouenne, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
JouenneD@ugicorp.com

Erin L. Gannon, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101
egannon@paoca.org
dlawrence@paoca.org
(Email and Hand Delivery)

Alessandra L. Hylander, Esquire
Pamela C. Polacek, Esquire
Vasiliki Karandrikas, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
ahylander@mcneeslaw.com
ppolacek@mcneeslaw.com
vkarandrikas@mcneeslaw.com

Date: September 30, 2016

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