POST & SCHELL
ATTORNEYS AT LAW

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

Jessica R. Rogers

jrogers@postschell.com
202-661-6964 Direct
202-661-6944 Direct Fax
File #: 153583

September 30, 2016

VIA ELECTRONIC FILING

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

Re: Petition of UGI 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:

Enclosed for filing is the Reply Brief of UGI Central Penn Gas, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Jessica R. Rogers

JRR/jl
Enclosures

cc: Honorable Angela T. Jones
Certificate of Service

CERTIFICATE OF SERVICE

UGI Central Penn Gas, Inc.
(Docket No. P-2016-2537609)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL AND/OR FIRST CLASS MAIL

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

Pamela C. Polacek
Vasiliki Karandrikas
Alessandra L. Hylander
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

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

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

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

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

Date: September 30, 2016

Jessica R. Rogers

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 OF UGI CENTRAL PENN GAS, INC.

TO ADMINISTRATIVE LAW JUDGE ANGELA T. JONES:

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

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

Post & Schell, P.C.

Attorneys for UGI Central Penn Gas, Inc.

Date: September 30, 2016

TABLE OF CONTENTS

Table of Authorities

Page

COURT DECISIONS

PENNSYLVANIA ADMINISTRATIVE AGENCY DECISIONS

PENNSYLVANIA STATUTES

I. INTRODUCTION

Pursuant to the procedural schedule adopted in this proceeding, UGI Central Penn Gas, Inc. ("UGI-CPG" or the "Company"), the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), and the Central Penn Gas Large Users Group ("CPGLUG") filed Main Briefs on September 22, 2016. In their Main Briefs, OSBA, OCA, and CPGLUG recommend that UGI-CPG's 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") be denied. I&E supported the Company's request for waiver and an increase in its Main Brief; however, I&E recommends the Commission limit the increase to 7.5%. UGI-CPG files this Reply Brief in response to the Main Briefs of OSBA, OCA and CPGLUG. UGI-CPG anticipated many of the issues raised in other parties' Main Briefs, and previously addressed these issues in the Company's Main Brief. Therefore, this Reply Brief will avoid repetition and limit itself to responsive arguments. For the reasons explained herein, the arguments in opposition to UGI-CPG's Petition raised by OSBA, OCA, and CPGLUG should be rejected, and UGI-CPG should be permitted to increase its DSIC rate cap to 10% of billed distribution revenues.

II. ARGUMENT

A. THE STANDARD FOR WAIVER OF THE DSIC CAP PROPOSED BY OSBA AND OCA IS UNREASONABLE AND SHOULD BE REJECTED.

1. OSBA and OCA add language to the statute which does not exist.

OSBA and OCA interpret Section 1358(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1358(a)(1), to require a showing that a utility cannot continue to provide safe and reliable

service without an increase in the DSIC cap in order for a waiver to be granted.[1] (OSBA MB, p. 5; OCA MB, pp. 5, 9; CPGLUG MB, p. 6.) However, no party supports this assertion with any reference to the specific language from the statute, because no such language exists. OSBA and OCA are reading an additional requirement into the plain language of the statute. This improper statutory interpretation must be rejected.

The plain language of Section 1358(a)(1) is identical to the language of Sections 1353 (for approval of an initial DSIC), and Sections 1352(6) and 1352(7) (for approval of a Long-Term Infrastructure Improvement Plan ("LTIIP")). That language provides that approval of the DSIC, DSIC cap waiver, and LTIIP is appropriate "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." Nowhere in the statute is there any language instructing the Commission to grant a DSIC cap waiver only where it would not be possible "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" without the waiver. Where the plain language of a statute is clear and free from ambiguity, no additions or outside sources should be used to interpret it. 1 Pa.C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.")

OSBA attempts to support its interpretation through an improper manipulation of Section 1353. It its Main Brief, OSBA argues that the use of "in order to" in Section 1353(a) makes the phrase "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" a reference to the criteria for the costs to be recovered, rather than the standard for approval. (OSBA MB, p. 6.) This argument is in error. Act 11 already specifically defines the costs that

[1] CPGLUG relies entirely on issues and arguments raised by Mr. Knecht in order to support its position in its Main Brief. (*See, e.g.*, CPGLUG MB, p. 5.) To the extent CPGLUG's arguments overlap with those made by the OSBA, the Company addresses the arguments of OSBA. The Company addresses CPGLUG's unique arguments separately in this Reply Brief.

may be recovered through the DSIC in 66 Pa.C.S. § 1351. OSBA's effort to recast Section 1353 in order to fit its theory in this proceeding would create an unnecessary redundancy in the statute. Further, in the numerous cases where the Commission has interpreted Section 1353, it has consistently held that "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" is the standard for granting a DSIC, and has never identified that language as a way to determine the proper scope of the costs recovered through the DSIC. OSBA's effort to manipulate the plain language of the statute to fit its statutory interpretation is not supported by the Commission's past interpretation, and should be rejected.

OSBA also relies heavily on the legislative history to support its interpretation of the statutory standard. (OSBA MB, pp. 10-12; CPGLUG MB, p. 6.) Not only does OSBA quote from 1 Pa.C.S. § 1939, which provides that when the language of the statute is clear it controls in the event of a conflict with the legislative history, but OSBA also states that "little, if any, of the discussion surrounding this legislation involved the need for or implications of waiving the explicit five percent cap." (OSBA MB, p. 12.) Thus, despite OSBA's effort to show that the "legislature set a high bar" for waiver of the DSIC cap through the legislative history (OSBA MB, p. 13), there is simply nothing in the legislative history that corroborates this claim.

Both OSBA and OCA argue that additional regulatory hurdles should exist for a utility to be eligible for a waiver, because, they argue, the plain language of the statute would give a utility an automatic waiver of the DSIC cap. (OSBA MB, pp. 6, 8, 13; OCA MB, p. 9.) However, this argument overlooks the numerous regulatory hurdles that UGI-CPG must already meet prior to requesting a waiver. UGI-CPG has met all of the components of Section 1352 in order to have the Commission approve its LTIIP. In addition, UGI-CPG met all of the separately identified components of Section 1353 in order to establish an initial DSIC. Finally, UGI-CPG has

petitioned the Commission for consideration of a waiver, based on its specific circumstances and experience. In this instance, that includes exceeding the DSIC cap at 5% and increasing the identified spending associated with the LTIIP by more than 20%. OSBA and OCA are incorrect in their assertion that the standard proposed by the Company – which conforms to the plain language of Act 11 and the Commission's prior interpretation of that language – gives utilities an automatic waiver of the DSIC cap. There are numerous checks in the system, as well as the powerful impact of the Commission's discretion, which is discussed more fully later in this Reply Brief.

The interpretation proposed by OSBA and OCA is inconsistent with proper statutory interpretation, and would bring the DSIC statute into conflict with the utility's obligation to continuously provide safe, reliable and reasonable service pursuant to 66 Pa.C.S. § 1501. The standard applied by OSBA and OCA would create an "absolute necessity" standard, which has previously been rejected by the Commission and the Commonwealth Court in other contexts addressing safe and reliable service. *See Hess, et. al. v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014). The appropriate standard in this proceeding, which would allow the Commission to interpret Section 1358(a)(1) consistently with the other provisions of Act 11, and with the other provisions of the Public Utility Code, is the standard proposed by UGI-CPG and I&E in this proceeding.

2. The interpretation proposed by OSBA and OCA impermissibly reads the waiver provision out of the statute.

The OSBA and OCA propose a standard in this proceeding that adds language to the statute that it does not contain, and in doing so would effectively render Section 1358(a)(1) obsolete. This method of statutory interpretation is improper, and unfounded.

OSBA supports its proposal to add language to the statute through its witness, Mr. Knecht. (OSBA MB, p. 7.) Mr. Knecht proposed three potential methods of statutory interpretation in his testimony, which the OSBA repeats in its Main Brief. (OSBA MB, p. 7; OSBA St. No. 1, at 6-7.) However, Mr. Knecht is an economic analyst, and does not have a law degree. (Tr. 120; OSBA St. No. 1, at 1.) Therefore, none of his legal theories should be given any weight.

OSBA quotes 1 Pa.C.S. § 1921 on page 9 of its Main Brief for the principle that:

> 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.

(emphasis added). On the same page, OSBA quotes 1 Pa.C.S. § 1922, which provides in relevant part that "the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable." However, OSBA and OCA would add to the articulated standard in Section 1358(a)(1) a requirement that the utility identify "extraordinary circumstances" in order to be eligible for a waiver. As Mr. Knecht acknowledged, this standard would make it extremely difficult, if not impossible for the Commission to grant a petition to waive the DSIC cap and would likely require lack of access to capital markets. (Tr. 124; OSBA St. No. 1-S, p. 4.) This standard is so difficult that Mr. Knecht could not think of a single utility that would meet his standard, despite being a witness in more than one hundred separate utility proceedings. (Tr. 124; OSBA Ex. IEc-1, p. 1.) A standard so onerous that it could never be utilized would violate 1 Pa.C.S. § 1922. The standard proposed by OSBA and OCA should be rejected.

3. The standard proposed by OSBA and OCA is illogical.

The standard proposed in this proceeding by OSBA and OCA, in addition to being improper based on the rules of statutory construction, would establish perverse incentives that

are contrary to the goals of the General Assembly and the Commission to ensure safe and reliable service to customers. Strikingly, OSBA acknowledges that its standard would reward utilities that let their systems fall into disrepair by allowing them to waive the DSIC cap. (OSBA MB, p. 17.) Rather than adopting a standard that rewards utilities who delay critical infrastructure work to the point where safe and reliable service is threatened, the Commission should articulate a standard that encourages proactive infrastructure repair and replacement. Such a standard is consistent with the legislative purpose of the DSIC. Setting a standard that requires the system to be in disrepair does not further the Commission or General Assembly's goal of encouraging utilities to proactively undertake expensive infrastructure work.

Critically, the OSBA and OCA's proposed "extraordinary" standard would necessitate a state of extreme financial distress that could not be remedied by receipt of a DSIC cap waiver. The DSIC provides only incremental prospective relief, not holistic emergency rate relief. For example, were UGI-CPG's DSIC waiver petition to be granted, and the cap to be raised to 10%, the Company would only receive approximately an additional $578,000 over the next quarter (assuming an effective date of January 1, 2017), and approximately $2.2 million of additional revenue over the next year, until it reached the 10% cap. (UGI-CPG Exh. No. WJM-3.) During that same period of time, the Company will be investing more than $30 million in infrastructure replacement work. (UGI-CPG Exh. No. WJM-4.) If the Company were in such dire financial circumstances that it could not secure funding sufficient to undertake the projects necessary to ensure safe and reliable service, *i.e.*, the projects already identified in its LTIIP which the Commission found will ensure safe and reliable service and which are anticipated to cost $20 million dollars per year, the small incremental return provided by the DSIC would not remedy that situation. *See Petition of UGI Central Penn Gas, Inc. for Approval of their Modified Long-*

Term Infrastructure Improvement Plan, Docket No. P-2013-2398835, p. 5 (Order entered June 30, 2016) ("*UGI-CPG Modified LTIIP*"). The DSIC is not intended to provide emergency relief for a utility experiencing a financial or operational crisis. Rather, it was intended to avoid those very emergencies by encouraging proactive repair and replacement of infrastructure with more timely return on a portion of the investment. The standard applied to Section 1358(a)(1) should be aligned with the overall goals of Act 11.

For a utility experiencing serious financial circumstances, the Commission is already empowered with the authority under 66 Pa.C.S. § 1308(e) (extraordinary rate relief) to craft relief that will ensure that customers are not harmed. (UGI-CPG St. No. 1-R, p. 8.) Proper statutory construction requires the different parts of the code to be read together, where possible, to give effect to all provisions. 1 Pa.C.S. § 1921. OSBA and OCA's interpretation would create a regulatory redundancy.

Thus, OSBA and OCA propose an interpretation of Section 1358(a)(1) that is illogical and would make the provision unusable. This interpretation discourages infrastructure repair and replacement, would apply only to utilities in extreme financial distress, and, if then applied, would be an insufficient means to remedy the utility's predicament. The interpretation advanced by OSBA and OCA should therefore not be accepted as the standard for granting a waiver of the DSIC cap.

4. The Commission should not limit its ability to exercise its discretion through adoption of the standard proposed by OSBA and OCA.

OSBA and OCA advocate for a "hard cap" that would strip the Commission of its discretionary authority. Under the standard proposed by OSBA and OCA, the Commission's ability to proactively encourage utility behavior would be curtailed. In its place, the Commission could only exercise a waiver upon a showing that the utility may not be able to meet its basic

service obligations. This interpretation is inconsistent with the plain language of the statute, with the indications of the General Assembly at the time of passage of the statute, and should therefore be rejected.

The plain language of the statute preserves the Commission's authority and discretion. Section 1358(c) provides:

> Construction.--Except as otherwise expressly provided under this subchapter, nothing under this subchapter shall be construed as limiting the existing ratemaking authority of the commission, including the authority to permit recovery of operating expenses through an automatic adjustment clause, or as indicating that the existing authority of the commission over rate structure or design is limited.

This language indicates that the General Assembly did not seek to curtail the Commission's ratemaking authority through the customer safeguards identified in Section 1358, which includes the waiver provision. Further, the legislative history indicates that the General Assembly trusted the Commission to use its discretion and expertise to ensure that customers are protected, that the rates are just and reasonable, and that utilities will be able to use the DSIC to proactively address safety and service reliability. Specifically, OSBA conveniently fails to include certain portions of Representative Saylor's comments:

> [I]nfrastructure for companies needs to be expedited and upgraded quickly many times, and the alternative ratemaking procedures that are set forth in this bill help save our consumers about $900,000 per case...The customers are already paying very much...but we have in Pennsylvania the Office of Consumer Advocate and many other interests who go before the PUC ... And by the way, the PUC does not have to approve these cases. It is up to the PUC after they have heard from this petition as to whether they want to proceed.

(UGI-CPG Exh. No. WJM-1S.) The General Assembly entrusted the Commission with significant authority in applying Act 11 to accomplish the goal of accelerating repair and replacement of aging infrastructure. The General Assembly considered the Commission to be

best suited to address the complex issues associated with ratemaking.[2] The Commission should not arbitrarily limit the discretion granted to it by the General Assembly by interpreting Section 1358(a)(1) to confine its authority to only those instances of truly extraordinary circumstances, as advocated by OSBA and OCA.

In developing a standard for this proceeding, the Commission need look no further than its past treatment of petitions to waive the DSIC cap. Through the use of its discretion in the past, the Commission was able to strike the appropriate balance for water utilities at 7.5%. (UGI-CPG St. No. 1-R, pp. 14-15.) Both OSBA and OCA opposed the increase in the water DSIC waiver proceedings, but the Commission rejected their arguments. *See, e.g., Pa. PUC v. Aqua Pennsylvania, Inc.*, 2009 Pa. PUC LEXIS 263 (Order entered July 23, 2009). As Mr. McAllister described, the 7.5% water DSIC is applied to the entire water bill, unlike the UGI-CPG DSIC. (UGI-CPG St. No. 1-R, p. 15.) Therefore, only increasing the UGI-CPG DSIC to 7.5% would provide far less economic relief than the water DSIC provides at 7.5%. (UGI-CPG St. No. 1-R, p. 15.) The Commission should exercise its discretion in this proceeding to establish the same reasonable balance it struck in the DSIC waiver proceedings for the water utilities.

OSBA argues that if the Commission waives the 5% DSIC cap in this proceeding, it will deprive the DSIC cap of any effectiveness. (OSBA MB, p. 8.) This argument is incorrect. The 5% cap has served its purpose of limiting the Company's initial DSIC. As of July 1, 2016, UGI-CPG has been limited in its ability to include new plant in the DSIC. The 5% cap, and the requirement that the Company seek waiver through a petition, has given the parties an opportunity to investigate the past use of the DSIC, the projected recovery through the DSIC at a

---

[2] *See, e.g.*, UGI-CPG Exh. No. WJM-1S (comments of Representative Reichley on Commission expertise in areas of complex and technical rate making).

higher cap, and the impact of increasing the DSIC cap on customers' bills. The 5% DSIC cap has served its purpose, which was to limit the Company's ability to utilize the DSIC until the Commission had the opportunity to review the facts and circumstances necessitating an increased cap. For the reasons described in the Company's Main Brief, particularly the critical work being addressed by the LTIIP that will ensure safe and reliable service, the waiver should be granted.

OSBA's concern about the impact of waiving the DSIC cap also ignores the Commission's obligation to exercise its discretion in order to ensure that rates are just and reasonable. Both OSBA and OCA instruct the Commission to be cautious in their Main Briefs. (OSBA MB, p. 20; OCA MB, p. 13.) Nothing in the Company's position encourages the Commission to do anything other than exercise its carefully considered discretion on a case by case basis. (UGI-CPG St. No. 1-R, pp. 10-11, 13.) This discretion was granted to it by the General Assembly. (UGI-CPG St. No. 1-R, p. 13.) The Company encourages the Commission to use the same standard that it has applied in prior DSIC proceedings, and in all other rate proceedings, which is to determine that the rates produced under a 10% cap are just and reasonable. (UGI-CPG St. No. 1-R, pp. 4-6.) This will not make the DSIC cap obsolete, and will instead ensure that the best interests of the customers to receive safe and reliable service are served by the DSIC.

Finally, OCA and CPGLUG emphasizes that the Commission has only waived the DSIC cap in a single proceeding since the passage of Act 11, and that was in *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 Jan. 28, 2016) ("*PGW*"). (OCA MB, p. 11; CPGLUG MB, pp. 7-8.) OCA states that *PGW* stands for the principle that waiver is only appropriate where no other means of funding is

available. (OCA MB, p. 8.) Both of these arguments are misleading. *PGW* is the only Act 11 DSIC waiver case that the Commission has considered at this time. Therefore, the proper conclusion is that the Commission has waived the DSIC in 100% of the cases it has considered. In addition, the Commission acknowledged that other sources of funding were available to PGW, but found nonetheless that waiver of the DSIC rate cap and its increase was still appropriate. *PGW* 43-44. Further, it is worth noting that OCA and OSBA both opposed the waiver in *PGW*, for virtually the same underlying reasons they oppose wavier in this proceeding, and the Commission rejected their positions.

B. UGI-CPG'S ACCELERATED REPLACEMENT PLAN IS ADDRESSING IMPORTANT SAFETY CONSIDERATIONS.

1. The Commission has already found that the Company's plan will ensure safe and reliable service both now and into the future.

OSBA and OCA argue that the Commission should not approve the Petition to waive the DSIC cap under Section 1358(a)(1) because the Company has not shown that the waiver is necessary in order for the utility to provide reasonable service. (OSBA MB, p. 5; OCA MB, p. 8.) Not only is this standard an incorrect interpretation of the statutory language, as described in the previous section of this Reply Brief, but the Company has, in fact, shown that the plans contained in the Company's modified LTIIP are necessary in order to provide safe and reliable service, and that the DSIC waiver will allow the Company to continue undertaking DSIC-eligible infrastructure work.

The Commission found, as recently as June 30, 2016, that the projects in UGI-CPG's modified LTIIP "demonstrate that their associated expenditures are reasonable, cost effective, and designed to ensure and maintain efficient, safe, adequate, reliable, and reasonable service to their customers." *UGI-CPG Modified LTIIP*, p. 6. It is these LTIIP projects – the same projects that the Commission recently found would ensure efficient, safe, adequate, reliable, and

reasonable service – that have driven the DSIC to exceed the 5% threshold. Further, these projects have pushed the Company over the 5% threshold with less than two years of infrastructure replacement work reflected. (UGI-CPG St. No. 1-R, p. 11.) With the approval of the modified LTIIP, and the increased level of spending reflected in the modified LTIIP, the pace at which the lost revenue will accrue as a result of the DSIC cap will greatly exceed the time in which it took for the Company to arrive at the 5% DSIC cap.

The only evidence regarding the long-term impact of denying the Company's Petition was presented by Mr. Bell. At the hearing, Mr. Bell stated:

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

(Tr. 88.) OSBA and OCA encourage the Commission to conclude that because the Company has committed to meeting its basic obligation to continue to provide safe and reliable service, whether or not this Petition is granted, the Commission should therefore deny this Petition. (OSBA MB, p. 5; OCA MB, pp. 7-8.) Such a position is short-sighted, focusing only on the immediate impact of the Company's proposal, and not on the long-term role that the DSIC plays in the Company's commitment to replace all cast iron pipeline on all three UGI Company systems by February 2027 and all bare steel pipeline by September 2041, as well as addressing the numerous other regulatory and safety-related obligations the Company is and will be faced with. The Commission should strike the appropriate balance in this proceeding to maximize the Company's ability to implement its LTIIP and to limit the impact of the Company's infrastructure replacement plans on customers' bills.

The record evidence in this proceeding shows that the ongoing work that is supported by the DSIC has been found by the Commission to ensure UGI-CPG's ability to provide safe and

reliable service to the Company's customers. An increase in the DSIC rate cap not only supports necessary infrastructure work which is currently being undertaken, but the increase will play a critical role in supporting work that ensures and maintains efficient, safe, adequate, reliable, and reasonable service into the future.

2. OSBA and OCA have not challenged the necessity of the projects that UGI-CPG has identified in its LTIIP.

OSBA and OCA emphasize that because there is no urgent safety concern on the Company's system, the Commission should not approve the petition to increase the DSIC cap. (OSBA MB, pp. 5, 19; OCA MB, p. 7.) However, the uncontradicted evidence in this proceeding shows the LTIIP is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service, as identified by the Commission in its order approving the modified LTIIP. *See UGI-CPG Modified LTIIP*, p. 6. The two expert witnesses qualified to discuss safety concerns and engineering in this proceeding agreed that the Company's DSIC-eligible spending addresses infrastructure work that provides important safety benefits to the Company's customers. (I&E St. No. 1, pp. 9-11; UGI-CPG St. No. 2-R, pp. 2-5; Tr. 90; 104.) No other party produced expert witnesses who were qualified to discuss safety or engineering. (I&E St. No. SR-1, p. 2.) Further, Mr. Knecht acknowledged that he had reviewed the Company's modified LTIIP, did not find anything in his review that he did not believe was necessary in order to ensure safe and reliable service to customers, and would not in fact be capable of making such a determination. (Tr. 117-118.)

OSBA and OCA have sought to minimize the importance that the LTIIP and DSIC play in ensuring that customers continue to receive safe and reliable service into the future. Both of the safety experts have acknowledged that waiving the DSIC cap will benefit the Company's ability to provide safe and reliable service, while helping to avoid exactly the kind of dire

operational situations that OSBA and OCA would make necessary in order to obtain a waiver. The Commission should adopt the position of the safety experts, both of whom support waiver of the DSIC cap in furtherance of the Company's Commission-approved LTIIP, and reject the position of the economic experts, neither of whom are qualified to even engage in a meaningful analysis of the safety benefits provided by the work identified by the Company.

3. OSBA misunderstands the safety data presented in this proceeding.

In its Main Brief, OSBA argues that the safety data presented by the Company and I&E should not be considered because it is a statistical anomaly, rather than an actual safety concern. (OSBA MB, pp. 18-19.) As noted previously, Mr. Knecht admitted that he is not qualified as a safety expert, but he did acknowledge that pipeline leaks are a serious safety concern. (Tr. 129-130.) As a result, Mr. Knecht is not qualified to opine on the Company's LTIIP or the specific safety data generated by the Company.

More critically, OSBA's arguments that the leak data are statistical anomalies completely misunderstands the nature of the data. Mr. Bell noted that part of the reason the leak data showed an increase was that the Company had reclassified the nature of the leaks to be more consistent with industry standards. (Tr. 80.) However, what OSBA fundamentally fails to acknowledge or understand is that the leak data numbers presented in this proceeding track leaks that have been repaired, and not just the number of outstanding leaks on the Company's system in need of repair. (Tr. 81.) The change in criteria has allowed the Company to address more leaks than it was addressing in the past, and at an earlier point in time, before the leak developed into a serious safety threat to customers. These leaks exist, must be repaired, and the repair work is funded through the DSIC mechanism. (Tr. 88.; I&E MB, p. 11.) OSBA's claim that the leak data is a statistical anomaly is in error.

OSBA makes a similar error regarding the nature of the data on inside meters. (OSBA MB, p. 19.) OSBA suggests that it is the "lack of progress" regarding inside meters that is of concern. This is inaccurate. The Company's need to accelerate spending on inside meters is due to the very fact that inside meters exist, and that they create an unsafe situation that has, in the past, caused serious harm to customers. (Tr. 104.) Nowhere in this proceeding has OSBA said what an appropriate amount of meters left inside homes would be, or what the appropriate number of identified leaks left unrepaired on the Company's system would be. These two categories of expense represent serious safety concerns identified by the safety experts who have testified in this proceeding, and recognized by the Commission. (Tr. 104.) The investment the Company is making to address these items will ensure safe and reliable service to customers.

C. OCA AND OSBA RELY ON INACCURATE DATA IN SUPPORT OF THEIR CLAIMS.

There are a number of places in the Main Briefs of the OSBA and OCA that make fact-based assertions that either fail to properly characterize the evidence in this proceeding, or are simply incorrect. In particular, OCA errs in describing the financial harm to the Company if this petition is not granted.

OCA asserts that the Company will only forego the depreciation and return on $3 million, and not the full $3 million. (OCA MB, p. 12, emphasis in original.) This is incorrect. If this petition is not granted, then by October 1, 2017, the Company will have failed to recover more than $3 million dollars. (UGI-CPG Exh. No. WJM-3.) The $3 million is the depreciation and return on investment in infrastructure repair and replacement for the period of June 1, 2016 through August 30, 2017, which will total more than $30 million. (UGI-CPG Exh. No. WJM-3; UGI-CPG Exh. No. WJM-4.) This is plant that cannot be reflected in the DSIC at this time, because the Company has reached the 5% DSIC cap as of July 1, 2016, but would be reflected if

the DSIC cap were increased to 10%. (UGI-CPG Exh. No. WJM-3.) This is money that the Company can never recover in the future. OCA is completely incorrect in its description of the financial impact of this proposal on the Company's overall economic wellbeing.

OCA argues that approval of the Company's petition will cause customers to experience a 100% increase in the DSIC rate. (OCA MB, p. 11.) The OCA's argument mischaracterizes the impact of the Company's proposal. While the petition does request an eventual increase of the DSIC from 5% to 10%, which would be a 100% increase in the total amount of revenues collected through the DSIC, customers would not experience that increase immediately. Rather, as shown in UGI-CPG Exh. No WJM-3, customers would experience a gradual increase on a quarterly basis over the next twelve months. This gradual increase will total approximately $0.56 per month per 1% increase for the average customer's bill. (UGI-CPG St. No. 1-R, p. 5.) OCA's argument is misleading in that it implies the kind of rate shock that the Commission traditionally seeks to protect the ratepayer from. Instead, the Company's proposal actually accomplishes the gradualism that the Commission prefers. Contrary to the OCA's argument, the Company's proposal does not cause rate shock.

The OCA relies on data and arguments generated by Mr. Knecht to support its position that UGI-CPG has not met its burden in this proceeding. (OCA MB, p. 10.) However, Mr. Knecht's calculations were flawed, and overinflated the Company's financial position. (UGI-CPG St. No. 1-R, p. 16.) Reliance on this inflated data calls into question any further analysis which utilized the flawed data.

Further, both OSBA and OCA rely heavily on historical data in order to project the time that the Company can go between future base rate cases. (OSBA MB, p. 15; OCA MB, p. 12.) These projections also assume no other changes in operating conditions or system needs, despite

the OCA's acknowledgement that there are many variables which make it difficult to predict the frequency of base rate proceedings. (OSBA MB, p. 15; OCA MB, p. 10.) OSBA and OCA's projections fail to recognize that UGI-CPG has only recently started accelerating its investment in infrastructure, *i.e.*, 2013, and that it has had the DSIC in place reflecting plant placed in service from June 1, 2014 to May 30, 2016. Looking at the Company's historical experience with base rate proceedings is not indicative, in any way, of its future need to undertake base rate proceedings, particularly if the DSIC cap is not increased in this proceeding. The Company's modified LTIIP requires a level of additional investment that is not sustainable without either an increase in the DSIC rate cap, or serial base rate proceedings. (UGI-CPG St. No. 1-R, p. 6.) The historical data relied upon by OSBA and OCA simply does not reflect the changed circumstances UGI-CPG faces.

Further, both OCA and OSBA fail to recognize that from this point in time, any base rate relief would be at least a year or more into the future. A base rate case would cost the Company hundreds of thousands of dollars that would be spent immediately in full, (UGI-CPG St. No. 1-R, p. 12; Tr. 57.), and would only be recovered from customers over a period of years after rates went into effect. *See, e.g., Pa. PUC v. PPL Electric Utilities Corp.*, Docket No. R-2012-2290597, pp. 47-48 (Order entered Dec. 28, 2012)(Commission established a 24 month recovery period for legal expenses associated with a base rate proceeding). A base rate proceeding would be administratively burdensome to the Company, and would take time to prepare. (UGI-CPG St. No. 1, p. 10.) From the time of filing, the Commission has nine months in which to make a determination, pushing any likely relief into late 2017, at the earliest. 66 Pa.C.S. § 1308(d). In that time, UGI-CPG will have received no new incremental revenue from the DSIC, estimated to be approximately $3 million, while spending $30 to $40 million on additional DSIC-eligible

property under its LTIIP. (UGI-CPG Exh. No. WJM-3; *UGI-CPG Modified LTIIP*, p. 5.) The argument that the Commission should reject this petition, on the grounds that a base rate proceeding could provide relief more than a year in the future, ignores the serious financial impact on the Company that would occur during that interim period. The eventual availability of base rate relief is not grounds for rejection of this petition, where the Company has shown that it meets the standards of Section 1358(a)(1).

Finally, the parties make various arguments about the impact on customers. OCA argues that the DSIC will be an additional burden on rate payers. (OCA MB, p. 13.) CPGLUG argues that there will be "little or no benefit" to customers. (CPGLUG MB, p. 8.) OSBA states that the 5% DSIC cap is the "maximum reasonable bill." (OSBA MB, p. 14.) These arguments should be rejected. First, the projects reflected in the DSIC are projects which the customers will pay for, whether it is through the DSIC or a base rate proceeding. No party has questioned that these projects would appropriately be reflected in base rates. Second, it is undeniable that there is a benefit to undertaking the work that is recovered through the DSIC, in terms of safety and reliability, and that there is a financial benefit to customers through reduced base rate proceedings. (UGI-CPG St. No. 1, p. 10; 1-R, p. 12; Tr. 57.) Finally, regarding the OSBA's claim, it is clear from the plain language of the statute that 5% is not the maximum reasonable bill, because the water utilities are permitted to charge a 7.5% DSIC, and because the DSIC waiver provision was included. 66 Pa.C.S. §1358(a)(2). The customer impacts raised by the parties are not persuasive, and should not be grounds for rejecting the Company's Petition.

The arguments presented by OCA and OSBA rely on flawed data, or mischaracterize the existing data. The projected timeline of base rate proceedings discussed by witnesses for OCA and OSBA is flawed, because they have relied on historical data, and have failed to consider the

impact of the modified LTIIP and the ongoing proceeding on the Company's financial situation. These arguments should, therefore, be given little to no weight in determining whether the Company has met its burden in this proceeding.

D. CPGLUG'S POSITION IS LEGALLY DEFICIENT AND SHOULD BE REJECTED.

In its Petition, UGI-CPG proposed a single change to its existing DSIC tariff, which was to adjust the 5% DSIC cap to 10%. The Company proposed no changes to its other customer safeguards. CPGLUG did not file any testimony in this proceeding challenging the sufficiency of the Company's evidence regarding the operation of the customer safeguards as a result of the Petition. No other party challenged the sufficiency of the customer safeguards. In particular, the Company did not propose any changes to the DSIC provisions impacting customers with competitive alternatives, and there was no issue raised at any time during the evidentiary phase of this proceeding regarding those customers. Therefore, the Company was provided with no notice or opportunity that it should put forward evidence on that issue.

In its brief, CPGLUG now challenges the sufficiency of the customer safeguards as they apply to customers with competitive alternatives. (CPGLUG MB, pp. 8-10.) A utility is not required to support unchanged portions of its tariff, or to provide more than a *prima facie* case at the outset of a contested proceeding. *See, e.g., Allegheny Center Assoc. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) *citing Central Maine Power Co. v. Public Utilities Commission*, 405 A.2d 153, 185 (Me.1979) ("While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.") A party challenging the sufficiency of existing tariff language, where the Company does not propose any changes, bears the burden of going forward. *See, e.g., Pennsylvania Public Utility Commission v. Pennsylvania*

Gas and Water Company, 1993 Pa. PUC LEXIS 36, *14-*15 (Order entered Mar. 2, 1993) ("[T]he Company is not required to present evidence in support of each change and every repercussion thereof. The Company had the burden to respond to only those matters properly challenged by the other parties.") UGI-CPG did not alter the customer safeguards, and specifically did not propose to change its policies regarding negotiations with large industrial customers that have competitive alternatives. The Company had no reason or opportunity to provide additional testimony or evidence on this topic, as it was unchallenged after all written testimony was presented.

CPGLUG now challenges the sufficiency of customer safeguards provided by the General Assembly in Act 11, 66 Pa.C.S. § 1358. These same customer safeguards were included in the model tariff issued by the Commission, and adopted without change by the Company in its original DSIC petition. *See Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Appendix A (Order entered Aug. 2, 2012) ("*Final Implementation Order*"). However, CPGLUG has failed to meet its burden in this proceeding, because it has put on no direct evidence to support its claim that the Commission's established customer safeguards, and particularly the existing unchanged treatment of competitive customers, is improper. Further, CPGLUG was unable to elicit any evidence on cross examination in support of its claims.[3] Where there is no record evidence, CPGLUG cannot meet its burden in this proceeding.

Further, CPGLUG appears to be challenging whether and how the Company's ability to eliminate or reduce the DSIC will be impacted as to specific large industrial customers.

---

[3] As Mr. McAllister stated on the witness stand, but which CPGLUG fails to state in its brief, because CPGLUG provided no notice of its issues in testimony, the Company did not have a witness participating in this proceeding that was qualified to answer questions relating to the Company's elimination or reduction of the DSIC to large commercial and industrial customers. (Tr. 72.)

(CPGLUG MB, pp. 9-10).[4] This challenge is fatally flawed, because the Company's ability to eliminate or reduce the DSIC is not a customer safeguard at all, but rather a safeguard the Commission specifically carved out for the utilities. The Commission recognized that the loss of competitive customers would be detrimental to the utility and its smaller business and residential customers, and that the utility therefore needed the ability to eliminate or reduce the DSIC charge in order to maintain its large industrial customers. Specifically, the Commission stated:

> Where the customer has negotiated rates based on competitive alternatives, it would be contrary to the contract terms and counterproductive in the long term to add costs that may induce the customer to leave the system and provide no support for infrastructure costs.

Final Implementation Order, p. 46. As the Commission indicated in its *Final Implementation Order*, for customers being charged negotiated rates under existing agreements that were not eligible for renegotiation, a utility could not automatically apply the DSIC at the time it was approved by the Commission, because it was outside the rates that had already been negotiated. Therefore, some flexibility was required. *Final Implementation Order*, p. 46. For customers with competitive alternatives who are being charged negotiated or contract rates, the utility is often already charging the maximum amount that the customer will agree to pay before that customer seeks to exercise its competitive alternatives. *See, e.g., Final Implementation Order*, at p. 44. From the clear language in the Commission's *Final Implementation Order*, the ability to reduce or exclude a particular competitive customer from the DSIC is not a customer protection, but rather a *utility* protection. CPGLUG cannot challenge the Commission's determination in the *Final Implementation Order*, which the Company adopted into its tariff without alteration and

[4] The Company notes that CPGLUG identified three industrial clients it represents in this proceeding, and counsel for CPGLUG presented exactly three hypothetical scenarios to Mr. McAllister in cross-examination. All of these hypotheticals involved customers with contractually reduced DSICs. Counsel for CPGLUG was unable to get definitive answers because she sought responses from a witness whose duties with the Company do not include negotiating contracts between large industrial customers and the Company. (Tr. 63-70.) However, basic contract law dictates that the terms of the contract will control.

which the Commission approved in the initial UGI-CPG DSIC proceeding, without direct evidence in support of its claims.

Finally, any finding in support of CPGLUG would violate the Company's right to substantive due process. In a contested proceeding such as this, due process demands, at a minimum, that all parties of record be given notice and an opportunity to be heard. *Dee-Dee Cab, Inc. v. Pa. PUC,* 817 A.2d 593, 598 (Pa. Cmwlth. 2003), appeal denied, 836 A.2d 123 (Pa. 2003). The use of Mr. McAllister's testimony, on page 10 of CPGLUG's brief, should be rejected outright. Mr. McAllister was not qualified to testify regarding the Company's negotiations with competitive customers, because it is outside the scope of his job duties and experience. CPGLUG's effort to sandbag its issue until cross-examination, and then to use a non-qualified witness' inability to answer questions outside the scope of his written testimony and his job duties in its brief, is fundamentally unfair. *Application of PPL Electric Utilities Corp.*, 2009 Pa. PUC LEXIS 2323, 225-226 (Order entered Nov. 12, 2009) ("It is axiomatic that a party may not introduce conjecture in a brief and masquerade it as legitimate fact, just like the Commission may not make up facts which do not appear in the record and then base a decision on them. This would be a flagrant violation of the due process rights of the parties to the case."). UGI-CPG was not put on notice that it needed to further support or defend the sufficiency of its unchanged customer safeguards prior to briefing, because no party filed testimony that would have provided the Company with notice and an opportunity to be heard. CPGLUG's had raised this issue untimely, and lacks affirmative evidence in support of its position. Therefore, it would be fundamentally unfair if CPGLUG's position was accepted.[5]

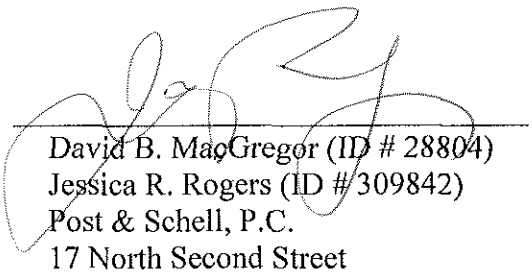
[5] The Company notes that rejection of CPGLUG's arguments in this proceeding would not deny CPGLUG the opportunity to seek relief if it believes that the DSIC, as applied to its clients, is unjust and unreasonable. CPGLUG may always seek relief through a complaint proceeding challenging the Company's method for eliminating or reducing the DSIC as to competitive customers.

The arguments of CPGLUG should be rejected, because CPGLUG has failed support its challenge with any affirmative evidence. Further, because CPGLUG did not bring forward its challenge through direct evidence, a finding against the Company would violate its right to substantive due process.

III. CONCLUSION

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

Respectfully submitted,



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

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

Post & Schell, P.C.

Attorneys for UGI Central Penn Gas, Inc.

Date: September 30, 2016